

March 30, 2022

1735

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

SHERROD, TEED, VANDERHAGEN and WARE,

Plaintiffs,

-v-

Case No. 17-10164

VNA and LAN,

Defendants.

/

JURY TRIAL

BEFORE THE HONORABLE JUDITH E. LEVY  
UNITED STATES DISTRICT JUDGE

MARCH 30, 2022

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*(Appearances Continued on Next Page)*

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TRANSCRIPT:

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March 30, 2022

1736

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March 30, 2022

1737

I N D E XWITNESSESPAGE

## DAYNE WALLING

Direct examination(cont.)by Mr. Stern...1740

Cross-examination by Mr. Christian.....1796

EXHIBITSMarkedAdmitted

## Plaintiff

602-43P.....1750 1750

602-43R.....1752 1752

602-43X.....1781 1782

0621.....1768 1768

1318.....1764 1764

3618.....Previously 1793

Marked

## Defendant VNA

76.....1830 1831

618.....1871 1871

627.....1874 1874

1906.....1880 1880

2609.....1816 1817

2756A.....1862 1863

2770.....1852 1852

4894.....1804 1804

5454I.....1884 1885

5454J.....1888 1889

MISCELLANYPAGE

Proceedings.....1738

Certificate.....1905

March 30, 2022

1738

P R O C E E D I N G S

THE CLERK: Calling Sherrod, Teed, Vanderhagen and Ware vs VNA and LAN.

THE COURT: Thank you. Please be seated. Could we have appearances.

MR. STERN: Your Honor, Corey Stern and Moshe Maimon on behalf of the bellwether plaintiffs.

THE COURT: Thank you.

MR. CHRISTIAN: Good morning, Your Honor. Marcus Christian, Daniel Stein, and James Campbell on behalf of VNA.

THE COURT: Good morning.

MR. MASON: And for LAN, Wayne Mason, Philip Erickson, David Kent.

THE COURT: Okay. Great. Thank you. Thank you, Mr. Walling, for being here safely.

The roads weren't bad, but I had about a quarter inch of ice, maybe an eighth of an inch of ice on my car. So I hope you got here safely.

I'm going to see if all of our jurors are here. Let's see. The little dots are going. No, they're not -- oh, they are. Wait. Are we missing any jurors? No. Okay. So they are all here.

What I'd like to do is address the issue of the video -- the request by plaintiffs to have live video testimony at a sidebar or at a break. So we'll do that later.

March 30, 2022

1739

1 So I will let Bill know we're ready.

2 It's supposed to be 60 degrees this afternoon.

3 MR. MAIMON: Isn't that crazy?

4 THE COURT: It's crazy. It's probably -- do you feel  
5 like it's good for the human body?

6 MR. CAMPBELL: Good for developing colds, Judge.

7 THE COURT: I heard. Do you have a cold,  
8 Mr. Campbell?

9 MR. CAMPBELL: I'm trying to get over it. I'm hoping  
10 not to spread it to anybody.

11 THE COURT: Well, it's a good thing to have these  
12 masks. Because you went home for a birthday celebration and  
13 came back with a cold was my observation.

14 MR. CAMPBELL: Yeah. I think that I brought it  
15 there, because my wife told me that I did when I spoke to her  
16 last night.

17 THE COURT: Oh, dear. Oh, I'm sorry. That's not a  
18 good birthday present.

19 MR. CAMPBELL: No. But it was a wonderful time.

20 THE COURT: Well, that's what matters.

21 You know, I've been thinking about how we all used to  
22 think, and maybe that's still the mindset in light of this  
23 trial, that our culture just tells us to go to work when we're  
24 sick. And I would love to see that turn around.

25 I'm one. I've done it all my life. I never used a

March 30, 2022

1740

1 sick day and blah, blah, blah. But I think it's -- the people  
2 who take their sick days when they're sick should be rewarded  
3 for protecting the rest of us.

4 But these will help just with ordinary colds, too.

5 THE CLERK: All rise for the jury.

6 (Jury In)

7 THE COURT: Well, welcome back to the jury. Thank  
8 you, so much, for being here. You made the right call about  
9 the weather. It wasn't too bad on the roads I hope. So  
10 please be seated. And we will get started right away.

11 And we were, I think, finishing Mr. Stern's  
12 examination.

13 So, Mr. Walling, you're still under oath to tell the  
14 truth from when you were first sworn in.

15 THE WITNESS: Yes, Your Honor.

16 DIRECT EXAMINATION (continued)

17 BY MR. STERN:

18 Q. Mr. Walling, good morning.

19 A. Good morning.

20 Q. Could you please turn to Tab 45 in your binder, Walling 1.

21 MR. STERN: Your Honor, this document was previously  
22 admitted as Plaintiffs' 0464.

23 THE COURT: Okay.

24 BY MR. STERN:

25 Q. Mr. Walling, if you could please turn to page 2 of this

March 30, 2022

1741

1 document.

2 A. Okay. Yes.

3 Q. I've highlighted at the top a section that reads, "Hi,  
4 Jason. I'm working on a story about an email that was sent out  
5 to the UM-Flint campus community on Friday about their water  
6 quality.

7 "I was hoping to get comment on if any of it seems  
8 related to the issues with Flint water or if it's an isolated  
9 incident. They saw high levels of lead in certain locations.  
10 I will copy the email below. Would someone be able to comment  
11 on this today?"

12 Do you see that, sir?

13 A. I do.

14 Q. If you could turn back to page 1 --

15 THE COURT: Can you tell us the date that was sent?

16 I'm not --

17 MR. STERN: Sure, Judge.

18 THE COURT: It's on page 1. Is that it what it is?

19 MR. STERN: Yes, Judge. It was sent on -- I'll point  
20 the Court to it. It was sent on Monday, February 9, 2015, at  
21 12:39 P.M.

22 THE COURT: Thank you.

23 MR. STERN: Sure.

24 BY MR. STERN:

25 Q. And then you can see where I've highlighted that

March 30, 2022

1742

1 Ms. Rossman-McKinney was forwarded that email from Mr. Lorenz  
2 as was Howard Croft, Elizabeth Murphy, and Gerald Ambrose.

3 Do you see that?

4 A. Yes.

5 Q. And Mr. Lorenz says, "Hello, everyone. Here is another  
6 water-related story that I believe can be deflected. It  
7 appears UM Flint has done water testing on their campus  
8 recently.

9 "The test came back showing TTHM levels were lower  
10 than MCL, but have shown in a few places higher than acceptable  
11 lead levels. Is this an internal plumbing issue that is not  
12 connected to us? Please advise."

13 Did I read that correctly?

14 A. Yes.

15 Q. And then as we go up, you can see that Rob Nicholas, on  
16 February 9 at 3:16 P.M. -- I'm sorry. I skipped one.

17 And you see on February 9, Ms. Rossman-McKinney says,  
18 "Proving what Rob and I were discussing, everyone is testing  
19 that darn water"?

20 A. Yes.

21 Q. Then Rob Nicholas, at 3:16 P.M., on February 9 responds to  
22 Kelly Rossman-McKinney, David Gadis, who we've talked about  
23 yesterday, Scott Edwards, Matt Demo, and Paul Whitmore.

24 And Mr. Nicholas says, "No. Lead could be a problem,  
25 based on the water. Part of what we will do is look at the



March 30, 2022

1743

1 water quality, testing, and results for lots of different  
2 variables."

3 Did I read that correctly?

4 A. Yes.

5 Q. At any point in time, on February 9, 2015, until today,  
6 did anyone from Veolia ever contact you directly and say, "Lead  
7 could be a problem, based on the water"?

8 A. No.

9 Q. And the section of the Mr. Nicholas's email that says,  
10 "Part of what we will do is look at the water quality, testing,  
11 and results for lots of different variables," does that line up  
12 with what your expectation was of what VNA was going to do for  
13 the City of Flint?

14 A. Yes.

15 Q. If you could turn, please, sir, to Tab 46 in your binder.

16 MR. STERN: Your Honor, this was previously --

17 THE COURT: It's 634.

18 MR. STERN: I'm actually going to go to 47 first.

19 No, I'm sorry, Judge.

20 THE COURT: Okay.

21 MR. STERN: 46, please.

22 THE COURT: Go to 46. Okay.

23 MR. STERN: And this was previously admitted as -- in  
24 the Gadis deposition as Exhibit 465.

25 THE COURT: Okay. I have that as received.

March 30, 2022

1744

1 BY MR. STERN:

2 Q. You can see that this appears to be the same document that  
3 I just showed you that was in Tab 45.

4 Do you have the highlighted version where someone's  
5 writing to Jason Lorenz, "and I'm working on a story"?

6 It's on page 2.

7 A. Yes.

8 Q. And then if I turn back to page 1 and you turn back to  
9 page 1, you'll see again where Mr. Lorenz states, "Hello,  
10 everyone. Here's another water-related story."

11 Do you see that, sir?

12 A. Yes. It's the same email.

13 Q. So far it appears to be an identical document, correct?

14 A. Right.

15 Q. And here is the Kelly Rossman-McKinney email that I didn't  
16 initially show you before but went back to, "Proving what Rob  
17 and I discussed."

18 Do you see that, sir?

19 A. Yes.

20 Q. But then on February 9 at 3:34 P.M., just 20 minutes or so  
21 after Mr. Nicholas first responded to Ms. Rossman-McKinney, he  
22 then again responds to David Gadis, Scott Edwards, Matt Demo,  
23 and Paul Whitmore.

24 And in this instance, he writes, "Kelly, do not pass  
25 this on. This begins to prove our concern that with lots of

March 30, 2022

1745

1 different people doing tests, it's a problem unless clear  
2 information is provided.

3 "Flow of water in different parts of the building is  
4 the school's responsibility. The city, however, needs to be  
5 aware of this problem with lead and operate the system to  
6 minimize this as much as possible and consider the impact in  
7 future plans. We had already identified this as something to  
8 be reviewed."

9 Did I read that correctly?

10 A. Yes.

11 Q. Okay. Did Ms. Rossman-McKinney or did Mr. Nicholas or  
12 anyone else from Veolia ever pass on to you that the city needs  
13 to be aware of this problem with lead and operate the system to  
14 minimize this as much as possible?

15 A. No.

16 THE COURT: Mr. Stern, before you leave this exhibit,  
17 have we been told or have we learned who Matt Demo is and the  
18 other people on these messages?

19 MR. STERN: I believe in the Gadis deposition, these  
20 were all VNA employees.

21 THE COURT: Right. And they're all people with VNA.  
22 Okay. Oh, I see. Okay. Thank you.

23 BY MR. STERN:

24 Q. Mr. Walling, if you could please turn to Tab 47.

25 MR. STERN: Your Honor, this was previously offered

March 30, 2022

1746

1 and accepted into evidence as Plaintiffs' 466.

2 THE COURT: Okay.

3 BY MR. STERN:

4 Q. Are you looking at the document, Mr. Walling --

5 Mayor Walling?

6 A. Tab 47?

7 Q. Yes, sir.

8 A. Yes.

9 Q. And on page 2, this, again, appears to be the exact same  
10 email. "Hi, Jason. I'm working on a story."

11 Do you see that?

12 A. Yes.

13 Q. And then if I turn to page 1, you see again from Jason  
14 Lorenz to the same group, "Hello, everyone. Here's another  
15 water-related story."

16 Do you see that?

17 A. Yes.

18 Q. Then if I move up a little bit, here's the line from Kelly  
19 Rossman-McKinney that I pointed out in the last two documents.

20 Do you see that?

21 A. Yes.

22 Q. And then Mr. Nicholas responds -- and this time he  
23 responds only to someone by the name of Marvin Gnagy.

24 Do you see that?

25 A. Yes.

March 30, 2022

1747

1 Q. The last two emails I showed you indicated that the emails  
2 had been sent to a number of people. And then Her Honor asked  
3 me who they were, and then we identified them as VNA employees.

4 Here Mr. Nicholas is only sending this to one  
5 employee Mr. Gnagy.

6 Do you see that?

7 MR. CHRISTIAN: Objection, Your Honor. He seems to  
8 be testifying.

9 THE COURT: Well, and also I'm not sure if the  
10 previous email went to Howard Croft and Gerald Ambrose. Those  
11 are the emergency manager and the director of public works.

12 MR. STERN: It did not. No --

13 THE COURT: Oh.

14 MR. STERN: -- the email from Ms. Rossman-McKinney --  
15 let me go back.

16 THE COURT: Okay. Yeah. I'd like that. Because I'm  
17 a little bit confused myself.

18 MR. STERN: Sure. So let's -- let me start over.

19 THE COURT: Sure.

20 BY MR. STERN:

21 Q. You can see here that Jason Lorenz is sending an email to  
22 Kelly Rossman-McKinney, Howard Croft, Elizabeth Murray, Gerald  
23 Ambrose.

24 "Hello, everyone. Here's another water-related  
25 story."

March 30, 2022

1748

1 Do you see that?

2 And then --

3 THE COURT: We didn't get an answer. We have to get  
4 an answer.

5 MR. STERN: I'm sorry.

6 BY MR. STERN:

7 Q. Do you see that, sir?

8 A. Yes. And have those individuals been identified?

9 THE COURT: Yeah. I'm not sure that Murphy,  
10 Elizabeth Murphy --

11 BY MR. STERN:

12 Q. Do you know who Elizabeth Murphy is, sir?

13 A. I do, yes.

14 Q. Who is she?

15 A. She's a Flint employee. She was the assistant to the  
16 emergency managers.

17 THE COURT: Okay.

18 BY MR. STERN:

19 Q. And then you see here, to answer Her Honor's question,  
20 Ms. Rossman-McKinney responds to that email but only includes  
21 David Gadis; Robert Nicholas; Scott Edwards, who has a Veolia  
22 address; Matt Demo, who has a Veolia address; and Paul Whitmore  
23 with a Veolia address.

24 Do you see that, sir?

25 A. I do.

March 30, 2022

1749

1 Q. So Ms. Rossman-McKinney is commenting on the earlier  
2 email, but she's only sending it to the Veolia addressees.

3 Do you see that, sir?

4 A. Yes.

5 Q. And then Mr. Nicholas, in his email, only goes to Marvin  
6 Gnagy, and he says, "Yep, lead seems to be a problem."

7 Do you see that, sir?

8 A. Yes.

9 Q. And at any point in time did David Gadis or Robert  
10 Nicholas or Scott Edwards or Matt Demo or Paul Whitmore or  
11 Kelly Rossman-McKinney ever come to you on February 9 or any  
12 time since and say, "Mayor Walling, lead seems to be a  
13 problem"?

14 A. No.

15 Q. Did anyone from Veolia ever come to you and say, "Lead  
16 seems to be a problem"?

17 A. Not that I can recall.

18 Q. Do you think that's something that you would recall if  
19 someone from Veolia had ever told you that, sir?

20 A. Yes. I can remember the other meetings where the  
21 different issues we've talked about with the city's water  
22 system came up. Those are in my notes. I try to use quotes.

23 Q. Well, let's take -- let's take a look at one of your  
24 notes. If you can turn to Tab 66, could you identify what you  
25 see in Tab 66, sir?

March 30, 2022

1750

1 A. It's in the other binder. Give me a moment.

2 Q. No problem.

3 A. Okay. Yes, this is -- these are meeting notes of mine  
4 from February 10, 2015, in a meeting with Veolia.

5 MR. STERN: Your Honor, plaintiffs seek to admit  
6 Exhibit 602-43P.

7 MR. CHRISTIAN: No objection.

8 MR. ERICKSON: No objection.

9 THE COURT: Okay. It's received.

10 (Plaintiff Exhibit No. 602-43P Admitted Into Evidence.)

11 BY MR. STERN:

12 Q. Mayor Walling, tell the jury about what these notes  
13 contain and why you made them at the time this meeting  
14 occurred.

15 A. So this February 10, 2015, meeting was an update from  
16 Veolia. It was one of these meetings in the mayor's office  
17 conference table. I remember the emergency manager's office,  
18 my office. Elizabeth Murphy's office that we just mentioned,  
19 we were all in that suite.

20 Q. We just looked at Plaintiffs' 466 from February 9, 2015,  
21 at 3:30 P.M. this was the third of three documents where  
22 Mr. Nicholas commented on lead.

23 Do you remember that?

24 A. Yes.

25 Q. Okay. At any point in time the next day on February 10,



March 30, 2022

1751

1 2015, did anyone from Veolia during that meeting step up and  
2 say, "Lead seems to be a problem"?

3 A. No.

4 Q. Are you surprised, having looked at three emails that I  
5 just showed you from Rob Nicholas where he indicates in various  
6 ways at various times all within an hour that lead seems to be  
7 a problem, that on February 10, 2015, one day later, no one,  
8 not a single person from Veolia --

9 MR. CHRISTIAN: Objection. Argumentative.

10 THE COURT: Overruled. Just -- but take it down a  
11 notch.

12 BY MR. STERN:

13 Q. Are you surprised that no one from Veolia mentioned it on  
14 the 10th?

15 A. Yes. This is an internal meeting. This is not -- this is  
16 not something where things would be fully decided. This wasn't  
17 in front of the public. I mean, that would be the purpose of  
18 this kind of meeting where you have discussions.

19 Rob Nicholas was there from Veolia. There may have  
20 been other Veolia staff that I don't recall by name. These  
21 are all important issues that we're covering here. Talking  
22 about equipment, distribution, customer service and public  
23 part.

24 I remember discussions on each of these things, you  
25 know, the advisory group. These are all -- we have a whole

1 set of problems in the water system. And I don't see any  
2 reason why if that was the discussion the day before, why  
3 would that have not just been on this agenda, would have been  
4 part of this meeting.

5 Even if it's still something that's under review or  
6 being tested, it -- I would have wanted to know.

7 Q. Okay. Can you please turn to Tab 68 in your binder, sir?

8 A. Yes.

9 Q. Could you tell the jury what this document is.

10 A. This is that same meeting between, you know, myself,  
11 executive staff, the emergency manager, and Veolia internally  
12 again in the mayor's office suite a week later.

13 So this is dated February 17, 2015. These are my  
14 handwritten meeting notes.

15 MR. STERN: Your Honor, plaintiffs seek to introduce  
16 602-43R.

17 MR. CHRISTIAN: No objection.

18 MR. ERICKSON: No objection.

19 THE COURT: Okay. It's received.

20 (Plaintiff Exhibit No. 602-43R Admitted Into Evidence.)

21 BY MR. STERN:

22 Q. Mayor Walling, could you please tell the jury whether  
23 anyone from Veolia a week later ever told you, based on what  
24 you remember, that lead seems to be a problem?

25 A. No.

March 30, 2022

1753

1 Q. When it came to red, yellow water is iron and air, and  
2 discolored water, higher volume of main breaks, hydrant  
3 flushing, did you ever have conversations with anyone from  
4 Veolia about why that was happening?

5 A. The discolored water -- and maybe we'll look at this later  
6 in the report, which is what I really paid the most attention  
7 to, because that was the public document, that was the final  
8 deliverable.

9 The discoloration in the water, you know, which was a  
10 problem, we were getting a lot of complaints about, it was  
11 described as iron in the water. And that that was causing the  
12 discoloration.

13 And that was coming from corrosion within the  
14 distribution system or the service lines or household plumbing.  
15 So that discolored water and corrosion was iron getting into  
16 the water.

17 Q. We've talked -- you've mentioned the word "aesthetics" or  
18 I've mentioned the word "aesthetics" in questions that I've  
19 asked, and you've answered so far today, and it's a word that  
20 the jury has heard repeatedly.

21 Could you explain what you believe "aesthetics" to  
22 mean in terms of the work that was being done and the  
23 conversations that were being had with Veolia around this time?

24 A. The aesthetics or, you know, the color, odor, smell,  
25 appearance, the way the water, you know, looks, smells, tastes.

March 30, 2022

1754

1 That's what I was understanding, you know, the aesthetic  
2 qualities of water.

3 You want really good, clean, clear water. That's  
4 what we all want when it comes out of the tap. Maybe we'll  
5 look at this later in the report.

6 But there's things that are direct public  
7 health-related. And then there's things like, you know,  
8 discoloration from iron or maybe some sediment that gets into  
9 the water if there's a main break. And the higher priority  
10 would, of course, would be the health issues.

11 Q. Okay. Do you see in the second line you made a note that  
12 says, "important topics"?

13 A. Yes.

14 Q. Why did you make that note?

15 A. That note related -- that top purpose related to public  
16 communications that were being discussed. So presentations to  
17 city council that are open, they're conducted under the Open  
18 Meetings Act.

19 And I don't think that took a lot of the meeting  
20 time, but that's what those three comments relate to, that  
21 Veolia should be looking to prepare information that was for  
22 the layman, you know, for your average kind of person who's  
23 concerned about the water. Comments should be short, and  
24 important topics should be covered.

25 Q. And do you think lead seems to be a problem, or if lead

March 30, 2022

1755

1 was a problem, would you consider that to be an important  
2 topic?

3 A. Yes.

4 Q. Are you aware that the following day, February 18, 2015,  
5 was a public meeting that was attended by a number of people  
6 including representatives from Veolia?

7 A. Okay. Yeah, that -- you can, refresh my time on the date.  
8 But I knew there was one upcoming from this 17th meeting.

9 Q. I'll represent to you there was a meeting that took place  
10 on the 18th, and we're going to get to that in a moment.

11 Do you recall in this meeting on the 17th having a  
12 discussion in preparation for the meeting on the 18th?

13 A. Yes, yeah. That top line was on a -- here's the general  
14 game plan. Think about your audience. Keep it short. Cover  
15 important topics. And then you'll see there's another -- well,  
16 there was a dash with a review and then there were some of  
17 those topics that were being explored.

18 Many that we've already, you know, touched on.

19 Q. Could you please turn to Tab 52. I apologize. Tab 51.

20 A. Just give me a moment.

21 Q. No problem.

22 A. I'm at 51.

23 MR. STERN: Your Honor, this was previously marked as  
24 Plaintiffs' 477 by way of the Gadis deposition.

25 THE COURT: Okay. Thank you.

March 30, 2022

1756

1 BY MR. STERN:

2 Q. Mr. Walling, you see on page 2, I've highlighted a section  
3 that appears to be an email from Joseph Nasuta at Veolia.

4 Do you see that?

5 A. Page 2?

6 Q. Yes, sir. Page 2 of the document. If you look on your  
7 screen, I've highlighted it.

8 A. Okay. Yes.

9 Q. And Mr. Nasuta states, "See the attached comment for Fahey  
10 regarding Flint. I think there are some issues at the corp BD  
11 level on this, but he need to look at it from the technical end  
12 only as we always do. Please keep this between us.

13 "On the Flint, Michigan, project that Marvin is  
14 working on, if the best technical decision is to go back to  
15 the City of Detroit as its supplier, we should not be afraid  
16 to make that call. Just make sure that the politics of this  
17 should not get in the way of making the best recommendation."

18 Did I read that correctly?

19 A. Yes.

20 Q. Did anybody from Veolia at any point in time on  
21 February 13 or after come to you and say, "The best technical  
22 decision is to go back to the City of Detroit"?

23 A. No.

24 Q. If you turn to page 1 of this document, sir, do you see it  
25 says on February 13 at 1:34 P.M., there's an email from Marvin

March 30, 2022

1757

1 Gnagy, and he states, "Nicholas giving interim PowerPoint  
2 report next week on findings thus far.

3 "Later we likely will present findings of treatment  
4 investigations. That's all I've been told. BD seems to be  
5 running the show. Not sure why?"

6 Did I read that correctly?

7 A. Yes.

8 Q. And then finally at the very top of this email thread, do  
9 you see there's an email from Joseph Nasuta on February 13,  
10 2015, at 6:47 P.M.?

11 A. Yes.

12 Q. And he states, "Talked with Fahey, and he made it very  
13 clear the technical group needs to point out that the quickest  
14 option and maybe the safest option is to return to Detroit  
15 water.

16 "We can say we have not evaluated the cost impacts of  
17 that option, if we have not, but we need to tell BD that this  
18 is an option and quick to implement."

19 Did I read that correctly?

20 A. Yes.

21 Q. As of Friday, February 13, 2015, or at any point  
22 thereafter, did anyone from Veolia ever make very clear to you  
23 that the quickest and maybe the safest option for the people of  
24 Flint was to return to the Detroit water?

25 A. No. I mean, what's hard for me is this is exactly where

March 30, 2022

1758

1 we ended up in October of 2015.

2 THE COURT: And, Mr. Stern, "BD," can you just remind  
3 us. It's been a few days.

4 MR. STERN: I'm very sorry. I think there's been  
5 testimony thus far that the acronym "BD" stands for business  
6 development.

7 THE COURT: Okay.

8 BY MR. STERN:

9 Q. Second paragraph of this document says, "I'm not sure what  
10 documents, emails, or your role in any presentation is, but  
11 please in some form, report paragraph or email best, tell BD  
12 that returning to Detroit is an option.

13 "If they want to throw that out and not bring it up,  
14 that is up to them. But we need to be sure to tell them the  
15 obvious. There is a quick, easy fix to this, even if it's not  
16 in the scope of work BD asked to look at."

17 Did I read that correctly?

18 A. Yes.

19 Q. We're going to get to the meeting in a minute with Rob  
20 Nicholas and David Gadis from the 18th.

21 Do you remember that meeting?

22 A. Yes.

23 Q. Do you remember anybody at that meeting, either  
24 Mr. Nicholas, Mr. Gadis, or Mr. Gnagy or anyone else from VNA  
25 come to you or say to the public, "The quickest and possibly



March 30, 2022

1759

1 the safest option for these folks in Flint is to go back to  
2 Detroit water"?

3 A. No.

4 Q. And do you see at the very bottom, Mr. Nasuta says, "Keep  
5 this in the group"?

6 A. Yes.

7 Q. And, in fact, they did keep it in the group, right?

8 MR. CHRISTIAN: Objection, Your Honor. Misstates the  
9 evidence.

10 THE COURT: Well, it does say, "Keep in the group,"  
11 but I don't know if this witness knows if they kept it in the  
12 group or shared it, so.

13 MR. STERN: I'll ask it a different way.

14 THE COURT: Okay.

15 BY MR. STERN:

16 Q. You weren't in the group, right, sir?

17 A. I was not.

18 Q. And no one ever shared it with you, correct, sir?

19 A. Correct.

20 MR. STERN: I'm going to switch to the PowerPoint, if  
21 that's okay.

22 THE COURT: Sure.

23 BY MR. STERN:

24 Q. You recall a meeting on February 18, 2015, Mr. Walling?

25 A. Yes.

March 30, 2022

1760

1 Q. Tell the jury what your memory of that meeting is, please.

2 A. Well, this was an opportunity for, you know, the public to  
3 get an update on Veolia. Remember we did the press conference,  
4 we said these experts were coming, they're going to give us  
5 additional information about our water system.

6 And we had these different ways of interacting with  
7 the public and stakeholder so that this was truly a public open  
8 meeting. And Veolia personnel were on a walking through  
9 overview, a PowerPoint along the lines of what we said. You  
10 know, keep it focused on the layman, keep it short, cover  
11 important topics.

12 Q. Do you recall whether David Gadis spoke at that meeting?

13 A. My memory is that Mr. Gadis and Mr. Nicholas were the  
14 speakers.

15 Q. This is an excerpt from the meeting on the 18th.

16 Could you just take a look at the excerpt and then  
17 tell the jury if you remember this?

18 A. You know, I remember that kind of sentiment being  
19 expressed. I don't -- you know, I don't recall this specific  
20 quote.

21 Q. Do you remember David Gadis at some point saying, "The  
22 water has come back safe"?

23 A. Yes.

24 Q. Do you remember Mr. Gadis at some point saying, "The water  
25 is safe"?

March 30, 2022

1761

1 A. Yes.

2 Q. Do you remember Gadis at some point saying, "And to this  
3 day, we can say that the water is safe"?

4 A. Yes. That was a theme of that meeting.

5 Q. Do you remember Rob Nicholas saying it easily could be  
6 safe?

7 A. I remember the safe part. Again, I don't remember these  
8 specific quotes, you know.

9 Q. We just looked at some notes from yours from the day  
10 before, and you had the word "layman" in your notes.

11 Do you remember that?

12 A. Yes, yes.

13 Q. Do you see on this next slide, you remember a woman  
14 asking, "Excuse me. In layman's terms, when you say something  
15 could be easily safe, what does that mean"?

16 A. Yes. Look, I've been to a lot of meetings in Flint by  
17 this point. And I know -- I know what's coming when people ask  
18 questions. So yes. This is what somebody asks.

19 Q. And do you remember that in response to that question in  
20 laymen's terms Mr. Nicholas saying, "Well, the water's safe  
21 from the standpoint of all the testing and chemicals that are  
22 put in there"?

23 A. Yes. That's what I would have been saying to the, you  
24 know, public around that time, too. That's what I took to be  
25 true.

March 30, 2022

1762

1 Q. Did it give you any confidence that the water was safe  
2 hearing it five or six times from Veolia representatives at  
3 this meeting?

4 A. Yes. And I didn't need to hear it multiple times. But  
5 Veolia's perspective on our water system was incredibly  
6 valuable to me. I've already shared my concerns about the  
7 limited capacity that we had at the city, the fact that the  
8 scope was bigger than what especially our public works director  
9 had any, you know, any experience with.

10 So I was very much paying attention. I highly valued  
11 Veolia's perspective.

12 Q. Do you remember that meeting being reported on by the  
13 press?

14 A. I'm sure it was.

15 MR. CHRISTIAN: Objection, Your Honor. This is  
16 argument that the plaintiffs' lawyer has put up.

17 THE COURT: Oh.

18 MR. CHRISTIAN: That heading is not evidence.

19 MR. STERN: I had showed these slides prior --

20 THE COURT: Was it -- just a minute, Mr. Stern.  
21 Was that part of the Gadis examination?

22 MR. STERN: It was.

23 THE COURT: Okay. Well, I'll allow it.

24 MR. CHRISTIAN: The heading was not part of the  
25 examination, Your Honor.

March 30, 2022

1763

1 THE COURT: Oh, I see. Okay.

2 MR. STERN: Hold on one second.

3 THE COURT: If you can do it without the heading.

4 MR. STERN: No problem.

5 MR. CHRISTIAN: Objection. Before we go with this, I  
6 want to make sure this was actually in evidence, this text  
7 that's being quoted here that Mr. Stern is publishing.

8 THE COURT: Mr. Stern is -- should we move on?

9 MR. STERN: That's okay. We'll move on.

10 THE COURT: Okay.

11 BY MR. STERN:

12 Q. Do you recall the press reporting on the meeting, sir?

13 A. Yes.

14 Q. Do you recall if the press reported that anyone at that  
15 meeting represented that the water was safe?

16 A. Yes. I mean, that's the biggest takeaway.

17 Q. Okay.

18 THE COURT: Okay. You have to take it off.

19 MR. STERN: Apologies.

20 I found a document last evening that I'd like to just  
21 share with the parties and then approach the witness with if  
22 that's okay.

23 THE COURT: Sure.

24 MR. STERN: May I?

25 BY MR. STERN:

March 30, 2022

1764

1 Q. You recognize this document, sir?

2 A. Yes.

3 Q. And at the top, do you see it's addressed from Howard  
4 Croft to Jerry Ambrose and then there's a few people CC'd,  
5 Elizabeth Murphy who you just explained to the jury who she  
6 was, Ms. Natasha Henderson who you've already described as the  
7 city manager or administrator, and then it says, "Flint mayor."

8 Is that you, sir?

9 A. Yes. That's me in, I think, Howard's contact list.

10 MR. STERN: Your Honor, we seek to introduce as  
11 Plaintiffs' Exhibit 1318, this email.

12 THE COURT: Any objection, Mr. Christian?

13 MR. CHRISTIAN: Is this on the exhibit list?

14 MR. STERN: Yes.

15 MR. CHRISTIAN: No objection, Your Honor.

16 MR. ERICKSON: No objection.

17 THE COURT: Okay. Then it's received.

18 (Plaintiff Exhibit No. 1318 Admitted Into Evidence.)

19 BY MR. STERN:

20 Q. And there at the top, you see the email from Mr. Croft, as  
21 well as yourself and a number of other people, correct?

22 A. Yes.

23 Q. And Mr. Croft says to you -- and this is on the 24th of  
24 February, correct, sir?

25 A. Yes.

March 30, 2022

1765

1 Q. This is sometime between the public meeting on the 18th  
2 and the day that the report came out on March 12, correct?

3 A. The report came out what date?

4 Q. March 12. We'll get to it. But I'll represent to you it  
5 was March 12, 2015.

6 A. Yes. This is February 24. In between those two dates.

7 Q. And according to Mr. Croft, he states, "I just spoke with  
8 Rob from Veolia, and his exact statement is that, quote" --  
9 sorry -- "is that the city, quote, 'Does not have a water issue  
10 but a political issue.'"

11 Do you see that, sir?

12 A. Yes.

13 Q. When you received this email, do you recall what you felt  
14 at that time?

15 A. Yes. And --

16 MR. CHRISTIAN: Objection. Relevance.

17 THE COURT: Sustained.

18 What did you do --

19 MR. STERN: I can ask -- I can ask it differently.

20 THE COURT: Ask a different question, yeah.

21 BY MR. STERN:

22 Q. When you received this email, did you have even more  
23 comfort that safety wasn't an issue with the water?

24 MR. CHRISTIAN: Objection. Relevance.

25 THE COURT: No, that's relevant. So but just ask a

1 direct question.

2 What was your response to this message?

3 THE WITNESS: Well, I took issue with the political  
4 part. Because that -- for me, again, like I stated, I didn't  
5 need political advice from Veolia. I wasn't surprised that  
6 they found Flint politics difficult. That's pretty obvious to  
7 those of us who have experienced it.

8 But then it goes on to cover the kinds of things we  
9 had been discussing in those private meetings. And I was  
10 pleased to see that alignment around the technical  
11 recommendations.

12 I figured this was just kind of somebody who was a  
13 little bit surprised by our politics, and I could bracket  
14 that.

15 I really wanted to know Veolia's perspective on the  
16 technical water issues.

17 THE COURT: Okay.

18 BY MR. STERN:

19 Q. Does it surprise you, sitting here today, that  
20 Mr. Nicholas said that it was not a water problem but a  
21 political issue in light of --

22 MR. CHRISTIAN: Objection. Relevance.

23 MR. STERN: I didn't even finish my question.

24 THE COURT: Yeah. Overruled.

25 BY MR. STERN:



March 30, 2022

1767

1 Q. Does it surprise you, sitting here today, that  
2 Mr. Nicholas said that it was not a water problem but a  
3 political issue in light of the three emails that I showed you  
4 a few minutes ago where he indicated that lead seems to be a  
5 problem?

6 A. Yes. And I don't think I exactly took it that way. I  
7 mean, we all knew we had water problems. I think he was just  
8 maybe taken aback by the politics.

9 But that's -- you know, other than the way somebody  
10 feels when they're tough -- in a really tough public  
11 environment, and maybe they feel like they don't get kind of  
12 respected or treated the way that they should, and maybe it  
13 shouldn't have gone as far in some cases in terms of the  
14 residents' frustration.

15 But residents had a lot of frustrations, and they had  
16 a lot of questions. So this isn't an either or. I mean, we  
17 knew we had water issues.

18 So, again, I certainly can't speak to Mr. Nicholas's  
19 mindset, but that's how I took it. I was focused on the  
20 technical content that followed that statement.

21 Q. Can you turn -- please turn to Tab 91 in your second  
22 binder.

23 A. 91?

24 Q. Yes, sir.

25 A. Yes.

March 30, 2022

1768

1 Q. Do you recognize this document, sir?

2 A. Yes. This is a letter that I wrote and submitted to the  
3 director of intergovernmental affairs, the White House  
4 Executive Office of the President.

5 MR. STERN: Your Honor, we seek to admit into  
6 evidence Plaintiffs' Exhibit 0621.

7 MR. CHRISTIAN: No objection.

8 MR. ERICKSON: No objection.

9 THE COURT: Okay. It's received.

10 (Plaintiff Exhibit No. 0621 Admitted Into Evidence.)

11 BY MR. STERN:

12 Q. Mr. Walling, you'll see at the top left corner is the  
13 mayor logo?

14 A. Yes. And you can see I left off the emergency manager on  
15 this one.

16 Q. Okay. This letter is from Jerry Abramson.

17 Who's Jerry Abramson?

18 A. So Mr. Abramson was the Director of Intergovernmental  
19 Affairs. That's one office within the executive office of the  
20 president, President Barack Obama at the time. And this was an  
21 office that I had had, you know, contact with as a mayor of a,  
22 you know, important American city.

23 Q. At the very bottom of this letter, you state, "I welcome  
24 any technical assistance you are able to coordinate, including  
25 expertise on water quality and public health, best practices

March 30, 2022

1769

1 with water treatment, and improving distribution system  
2 infrastructure.

3 "Thank you again for the valuable partnership. I  
4 look forward to working with you and federal partners as we  
5 transform Flint into a sustainable 21st century city with new  
6 jobs, safe neighborhoods, strong infrastructure, and great  
7 schools."

8 Do you see that?

9 A. Yes.

10 Q. What was the purpose of sending this letter on  
11 February 23, 2015?

12 A. The purpose was to elevate this issue. So as I described  
13 before in my call with Governor Snyder, I felt that, you know,  
14 regardless of who reported to who at the city or city  
15 administrator or emergency manager, that I had a responsibility  
16 as an elected official to communicate with other elected  
17 officials as what I saw as the challenges in Flint.

18 This is not the first time I had interaction with  
19 this office. We had it around public safety, around economic  
20 development. So now I'm laying out -- because a letter also  
21 serves as a way to, you know, communicate so that people can  
22 refer back to it. I laid out my concerns. I laid out what was  
23 occurring in the city.

24 And I'm specifically in this letter asking for  
25 support from the White House and the Environmental Protection

1 Agency to serve on the City of Flint's Technical Advisory Water  
2 Committee.

3 And that had been one committee that was set up to  
4 help us look at these different issues, that Veolia and LAN and  
5 city public work staff and others from Michigan Department of  
6 Environmental Quality, county public health.

7 So I was now specifically asking for someone to be  
8 assigned to work with that committee. You know, not just, "We  
9 need you to know about these issues," but there's a specific  
10 request for someone to add this to their probably already  
11 really long list of responsibilities for the Federal  
12 Government.

13 Q. Could you please turn to Tab 93.

14 A. Yes.

15 Q. Do you recognize this document, sir?

16 A. Yes.

17 MR. STERN: Your Honor, this was previously admitted  
18 as Plaintiffs' 0609.

19 THE COURT: Thank you.

20 BY MR. STERN:

21 Q. You see that this is the Veolia water quality report, sir?

22 A. Yes.

23 Q. Take a look at the report, if you don't mind.

24 You had seen this report when it was issued, correct?

25 A. Yes. And I had also seen a very similar draft.

March 30, 2022

1771

1 Q. If you can turn to -- sorry about that.

2 If you could turn to page 5 of the report.

3 A. Yes.

4 Q. I've got it on your screen, as well. You see this is  
5 under -- if you look at page 4, actually, it says, "Veolia's  
6 recommendations."

7 Do you see that at the very top?

8 A. Yes.

9 Q. Then if you turn to page 5, it says, "corrosion control."  
10 That is point 1, 2, 3, 4, 5, 6, 7.

11 It's the 8th bullet point under Veolia's  
12 recommendations.

13 Do you see that?

14 A. Yes.

15 Q. Before we even talk about this paragraph, did you have an  
16 understanding during the period of time between February 4,  
17 2015, and the date of this report, March 12, 2015, did you  
18 understand what corrosion control was, what it was for, and why  
19 it might be used?

20 A. I understood we had a corrosion -- we had corrosion  
21 problems or concerns in our city water system. And that was  
22 what was contributing to the discoloration, the odor, the  
23 color, the lead that was mentioned -- I'm sorry. I just  
24 misspoke.

25 The iron that was mentioned before.

1 Q. Other than the discoloration, the color, the odor, and the  
2 iron, did anyone from Veolia when discussing corrosion with you  
3 personally ever raise the issue of lead or lead poisoning?

4 A. No.

5 Q. What was the context of any conversation you may have had  
6 or been a part of when Veolia, if they did ever mention the  
7 word "corrosion"?

8 A. Well, it's exactly what's here. It's way to minimize the  
9 amount of discolored water, that it won't go away, it has the  
10 number of water breaks. I mean, broken valves, hydrant  
11 flushing. Those were all in the notes that we've seen.

12 So those things had been discussed. So this -- you  
13 know, this was what I understood our corrosion problems to be.  
14 In this -- summarized in this paragraph.

15 Q. If you can turn to page 9, sir.

16 You see at the top of page 9, it says, "Conclusions  
17 and next steps."

18 A. Yes.

19 Q. And you see box 2, which is highlighted on your screen  
20 says, "Contract with your engineer and initiate discussions  
21 with the state on the addition of a corrosion control chemical.

22 "This action can be submitted and with the state at  
23 the same time as the other chemical and filter changes saving  
24 time and effort. A target dosage of .5mgs per L phosphate is  
25 suggested for improved corrosion control."

March 30, 2022

1773

1 Did I read that correctly.

2 A. Yes.

3 Q. When you read this report in March of 2015, what was your  
4 understanding as to why this recommendation was being made?

5 A. Oh, I understood the corrosion issues were around, you  
6 know, the discolored water. The old, you know, iron pipes.

7 Q. Anything in this report that you see now or you remember  
8 then that ties corrosion, corrosion control issues to lead and  
9 lead poisoning issues?

10 A. I don't recall anything about lead.

11 Q. I mean, do you remember if the word "lead" even appears in  
12 this report?

13 A. Well, I do know that it doesn't. Because -- I'm sorry.  
14 But I mentioned before when I was reading that email that that  
15 was exactly where the Technical Advisory Committee ended up in  
16 October of 2015.

17 And during that fall period as these concerns were  
18 coming to light because of the independent research of Dr. Marc  
19 Edwards and then Dr. Mona Hanna-Attisha, I thought maybe I had  
20 missed something in the Veolia report.

21 I went back. I read it backwards. I wanted to know,  
22 you know, where was lead in here. How did this get missed?  
23 And it's not there. I thought, "Well, could it have somehow  
24 been in the draft report, like was there some -- was there  
25 some meddling that took place?"

March 30, 2022

1774

1 I read the draft report the same way. And lead is  
2 not mentioned. It wasn't in my notes. Wasn't in the  
3 PowerPoint. I had that PowerPoint slide. So, I mean, this is  
4 a gigantic omission.

5 MR. CHRISTIAN: Is there a pending question, Your  
6 Honor?

7 THE COURT: There was. It was whether there was lead  
8 in the report, mentioned in the report, and he provided his  
9 answer.

10 MR. CHRISTIAN: Okay.

11 MR. STERN: Thank you.

12 BY MR. STERN:

13 Q. Mayor Walling, could you turn to page 11, please? At the  
14 top of page 11, it says, "results expected."

15 Do you see that, sir?

16 A. I see it on the screen. Let me get to also the tab.

17 Q. It's not -- it's not a tab. I'm sorry.

18 A. Oh, page 11.

19 Q. I apologize. I'm sure it was me.

20 A. Give me a moment to go back. I'm just thinking about  
21 these binders.

22 Which tab is the report, please?

23 Q. 93.

24 A. 93. Page 11?

25 Q. Yeah.



March 30, 2022

1775

1 A. Okay.

2 Q. See it says at the top, "results expected"?

3 A. Yes.

4 Q. And then down about three bullet -- in fact, three bullet  
5 points down from "results expected," it says, "Discolored  
6 water. The discolored water is caused by the old unlined cast  
7 iron pipe.

8 "The water from the plant can have an impact on  
9 discolored water. But a greater concern is the breaks and  
10 construction work that can disrupt the flow of water causing  
11 discoloration.

12 "A polyphosphate is suggested to help bind the old  
13 cast iron pipe reducing instances of discolored water. This  
14 along with improve flow of water and programmed hydrant  
15 flushing will help but will not eliminate discolored water  
16 occurrences."

17 Did I read that correctly?

18 A. Yes.

19 Q. And does this confirm your memory about this report and  
20 what the addition of corrosion control was that you believed to  
21 be at the time?

22 A. Yes. I took what was in this report very, very seriously  
23 that, you know, that that informed my understanding. And then  
24 that was the sort of thing that I would explain to citizens  
25 when they asked me.

1           You know, you want to be able to -- I mean, I  
2     appreciated what I thought was the honesty here, that you can  
3     make these improvements. It doesn't mean a problem's going to  
4     totally go away.

5           You know, but you want to be able to tell people what  
6     you're working on and how it will, at least, make it better.

7           So that given a lot of our underground pipes were 50,  
8     60, 70, you know, 90 years old, that made sense to me.

9     Q.    You mentioned earlier in one of your answers to one of my  
10    questions that in October of 2015, the City of Flint ultimately  
11    switched back to the DWSD.

12           Do you recall saying that?

13    A.    Yes.

14    Q.    Between the report on March 12, 2015, and when the city  
15    switched back in October 2015, what do you remember about that  
16    period of time?

17    A.    Could you be more specific? That's --

18    Q.    Sure.

19    A.    We'd be here for a long time.

20    Q.    Well, we've got a report -- we've got a report from Veolia  
21    that we just looked at. You were at a public meeting with  
22    Veolia a few weeks earlier where they said the water --

23           MR. CHRISTIAN: Objection, Your Honor. He's  
24    testifying again.

25           MR. STERN: I'm trying --

March 30, 2022

1777

1 THE COURT: Well, just see if you can ask a question  
2 that will sort of narrow.

3 BY MR. STERN:

4 Q. What precipitated the change back to the drinking water?

5 THE COURT: There you go.

6 THE WITNESS: So Dr. Marc Edwards's research that he  
7 was coordinating out of Virginia Tech with people, with  
8 households, you know, citizens, scientists in Flint, he was  
9 challenging the notion that the -- you know, that the water  
10 was safe, that the water was being tested properly under the  
11 Michigan Department of Environmental Quality and City of Flint  
12 standards or protocols.

13 And as I was told by Dr. Mona Hanna-Attisha in our  
14 meeting with the Greater Flint Health Coalition, that his  
15 research prompted her as a pediatrician to then ask, "Well, if  
16 this lead risk in the water is actually affecting Flint's  
17 especially, you know, youngest children," you know, being a  
18 pediatrician.

19 So Dr. Mark Edwards's work prompted Mona  
20 Hanna-Attisha as she told me in that meeting to then spend a  
21 few sleepless weeks going through the data that she had access  
22 to through our public hospital, Hurley Hospital, to see what  
23 the results of blood lead level testing was among, you know,  
24 young children, especially those on Medicaid.

25 So it was her research that was presented to me and

March 30, 2022

1778

1 others the end of September of 2015 that prompted me to  
2 rethink the more incremental approach that we had been taking  
3 in Flint to making, you know, this improvement and then that  
4 improvement to try to solve these problems.

5 So I'm sorry, but this is very important to me.

6 At the time we did not have an emergency manager. We  
7 had a transition advisory board that had to approve all of the  
8 city's expenditures after the city council approved all of  
9 those expenditures.

10 And the only way that a resolution could get to the  
11 city council at that time under an emergency manager order  
12 that remained in effect was for the city administrator to send  
13 that resolution.

14 So I appealed to City Administrator Natasha  
15 Henderson, as well as Michigan Department of Treasury  
16 officials who were ultimately supporting the transition  
17 advisory board that the City of Flint, despite the cost, had  
18 to go back to the Detroit Water and Sewerage District for its  
19 at least short-term water supply.

20 We needed to leave the Flint River and the Flint  
21 Water Treatment Plant at that time.

22 And because of the sensitive nature of this issue,  
23 the high profile nature of this issue, I knew that  
24 Governor Snyder himself would be involved in this decision.

25 And reached out to him also directly through the

March 30, 2022

1779

1 Michigan Department of Environmental Quality Director Dan  
2 Wyant to begin discussing how we could pay what we would need  
3 to, money we effectively didn't have but we would find  
4 somehow, and started that conversation.

5 And I know that sounds complicated. But that was the  
6 reality of decisionmaking in the City of Flint. This was not  
7 something -- I couldn't go and flip the switch back, you know,  
8 by myself.

9 This was going to take a coordinated effort with the  
10 city administrator, the city council, the transition advisory  
11 board, which is all staffed and directed by the governor,  
12 ultimately.

13 And we'd have to find what I believe we determined in  
14 negotiations with Detroit would be \$9 million. The city  
15 contributed to that. The state legislature -- so the approved  
16 funds. Because the governor also can't spend that kind of  
17 money by himself.

18 And the CS Mott Foundation was a part of those  
19 negotiations.

20 And I'll just say this, because I mentioned this  
21 before. The one provision that Governor Snyder had was that  
22 the Technical Advisory Committee needed to meet and needed to  
23 affirm that direction.

24 That, yes, myself, the city administrator, the city  
25 council, we were, you know, significant voices in this. But

March 30, 2022

1780

1 the governor said in order for the support to be there,  
2 effectively meaning for the transition advisory board to  
3 legally permit the city to spend this money as it was being  
4 negotiated to be available, that the Technical Advisory  
5 Committee would need to meet.

6 It would need to affirm this direction of switching  
7 to Detroit. And that is what occurred in October.

8 And before I left office, I was defeated in what  
9 would have been my second reelection there in early November,  
10 I was able to announce that Detroit water was back and flowing  
11 and through the city's -- beginning to go through the city's  
12 distribution system.

13 Q. You just mentioned a lot of things that had to happen  
14 between the time the decision was made to go back to DWSD and  
15 when that actually happened.

16 If someone would have suggested to the jury at any  
17 point in time that it took one day to switch back to the DWSD,  
18 would that be accurate?

19 MR. CHRISTIAN: Objection, Your Honor.

20 THE COURT: Just did it -- would it have taken just  
21 one day?

22 THE WITNESS: It took a few weeks. We did both the  
23 formal decisionmaking, including the resolutions to take those  
24 actions.

25 And there was a technical process which I was, you

March 30, 2022

1781

1 know, I was updated on. I couldn't tell you the details, but  
2 I believe that took even itself, you know, approximately a  
3 week or so.

4 So it was a very, very collaborative effort between  
5 the City of Flint, the Genesee County Drain Commissioner's  
6 Office and the Detroit Water and Sewerage District.

7 Very, very effective collaborative process over what  
8 I think was about a week. Because that transmission line had  
9 not been -- at least a portion of that transmission line had  
10 not been used for a period of time.

11 So it was going to have to be tested in and of itself  
12 before it could be released into the -- you know, the public  
13 distribution system.

14 BY MR. STERN:

15 Q. If you would please turn to Tab 74.

16 Do you recognize this document, sir?

17 A. Yes. These are my notes that I was making for myself in  
18 preparing to go on a weekly radio show, a Saturday morning  
19 radio show on the local channel WFLT, a faith-based Christian  
20 radio show that did quite a bit of kind of public and community  
21 affairs shows, as well.

22 MR. STERN: Your Honor, plaintiffs seek to admit into  
23 evidence Exhibit 602-43X.

24 MR. CHRISTIAN: No objection.

25 MR. ERICKSON: No objection.

March 30, 2022

1782

1 THE COURT: Okay. It's received.

2 (Plaintiff Exhibit No. 602-43X Admitted Into Evidence.)

3 BY MR. STERN:

4 Q. Mayor Walling, I've made a habit of reading your notes to  
5 you. In this instance, it's a little bit difficult for me to  
6 read these notes.

7 Would you mind reading to the jury what you noted  
8 here?

9 MR. CHRISTIAN: Your Honor, may I ask -- just want to  
10 clarify the timeframe before -- the time of the notes, the  
11 date of the notes.

12 THE COURT: Yeah, I'm not clear exactly when the  
13 notes were created.

14 Do you know?

15 THE WITNESS: This was on the latter half of October  
16 2015.

17 THE COURT: Okay. So even though it says 9-6 to  
18 7-15, is -- that might be a -- I don't know what that is.

19 THE WITNESS: That was something -- that was  
20 something else. You can see this is -- these are really,  
21 like, personal notes in my pocket. So I've got things going  
22 some different ways. This is not a meeting.

23 THE COURT: But your testimony is this was October  
24 2015?

25 THE WITNESS: Yes.



March 30, 2022

1783

1 THE COURT: Does that satisfy you, Mr. Christian?

2 MR. CHRISTIAN: Yes. Thank you.

3 THE COURT: Okay. Thank you. So he's reading them  
4 to himself.

5 BY MR. STERN:

6 Q. It's -- I'm going to read it. I'm going to read it, and  
7 you tell me if I read it correctly.

8 THE COURT: I think he --

9 THE WITNESS: Yeah, I was just still -- are we  
10 proceeding?

11 MR. STERN: Yes, please.

12 THE COURT: Do you want to read it out loud, or do  
13 you want to read it to yourself?

14 THE WITNESS: I can read it out loud.

15 THE COURT: Okay.

16 MR. STERN: The only reason I ask is it's very  
17 difficult to read, and just putting it up -- I'd like for him  
18 to be able to tell the jury what it says.

19 THE COURT: Yeah, me, too.

20 THE WITNESS: So, again, so these are my notes going  
21 into a radio show pretty widely listened to in the Flint  
22 community. And so it's for a Saturday morning.

23 And I think you're not surprised -- it's not so much  
24 kind of pertinent here. But the politics around this and  
25 people blaming different people is occurring. That's what

March 30, 2022

1784

1 happens when there's a great deal of frustration.

2 I was in the mayor's seat. I was running for  
3 reelection. And maybe you'll agree with me that there are  
4 some criticisms of people that were making of me that I would  
5 have taken as fair.

6 And there were probably some criticisms that people  
7 were making of me that I thought were unfair or  
8 mischaracterizing, you know, my life, my choices, the  
9 decisions I made, and why I made them.

10 So this was coming at the tail end of that campaign.  
11 I very much want to serve another term as mayor. I want to be  
12 able to see, you know, this work get done. And I want to  
13 continue to be a part of it to help fix these problems.

14 So this is what I was writing to myself and very  
15 similar then to what I said that morning.

16 "It hurts me, a man of compassion, not putting  
17 people's lives at risk but working hard with people who can  
18 get it fixed. The Flint River, lead, costs. I won't turn my  
19 head. For those who have lived in Flint, we have an old  
20 infrastructure. Need to correct it.

21 "Poisoning people and taking life , it hurts me to  
22 think some would think that and depict me. It is so removed  
23 from me as a man, a father, a Christian, and a mayor."

24 And then those other notes were just kind of things I  
25 had made for the conversation. This was like my opening to

March 30, 2022

1785

1 that show that I knew would then cover, you know, these topics  
2 and more.

3 BY MR. STERN:

4 Q. And who's Donna, sir?

5 A. Donna Poplar was a friend, an advisor. She had also  
6 served as the city's director of human resources during that  
7 first term when I had the authority to appoint individuals to  
8 those positions.

9 Q. And when it says, "Donna - Comes a time when you have to  
10 take off mayor hat and put on human hat, that is what will get  
11 you through."

12 Were those notes what you made because you thought  
13 that, or were those your notes that you made because Donna said  
14 that?

15 A. Well, Donna did say them. But I wrote them down. I mean,  
16 she probably told me 15 things. But this was the one that I  
17 felt like, "Well, that really puts a finger on it. That's  
18 where the public is at."

19 And you know -- you know, I lost that second  
20 reelection. Dr. -- Mayor Dr. Karen Weaver carried that torch  
21 in her vocal advocacy, the kind of position she staked out in  
22 the campaign, you know, were what ultimately a majority of  
23 Flint voters gravitated towards.

24 But this was -- you know, my thinking. This was who  
25 I was. This was how I had tried to lead. And I wanted to put

March 30, 2022

1786

1 that case before the Flint public as they were making this  
2 decision about who the next mayor was going to be.

3 Q. Mayor Walling, I'm going to conclude with this.

4 Do you know that as part of this case that Veolia and  
5 LAN are blaming you personally --

6 MR. CHRISTIAN: Objection, Your Honor. This is  
7 argument and testimony.

8 THE COURT: Sustained.

9 BY MR. STERN:

10 Q. Mayor Walling, let me ask you this.

11 You are the former mayor of the City of Flint, and  
12 you were the chairman of the KWA board, right?

13 A. Yes.

14 Q. You were in office from August 6, 2009, through  
15 November 3, 2015, correct?

16 A. A couple of days after November 3. In Flint, a regular  
17 election, you get elected on a Tuesday. And the next mayor  
18 comes in the following Monday. So just a couple more days.

19 Q. What would you -- how would you react if someone claimed  
20 that you were a strong proponent of the KWA and chairperson of  
21 the KWA for your own personal political gain?

22 A. I would dispute that. I worked very hard to make  
23 decisions I thought were in the best interest of the Flint  
24 community. There often comes a time as mayor where you do --  
25 you pick one side or the other.

March 30, 2022

1787

1           You say, "I'm supporting this approach," or "I'm not  
2           supporting this approach." I supported the KWA, you know,  
3           after those analyses. I still think the KWA was a good  
4           project. The rest of the county is using that water -- using  
5           that water today.

6           Q. What would you say if someone said that, "Prior to the  
7           change in source of drinking water from Lake Huron,  
8           Mayor Walling was aware of the potential dangers of using the  
9           Flint River as an interim water source"?

10          A. I think it's fair that I knew there were concerns and  
11          issues. That's why there was a process. I mean, it was months  
12          of work that was undertaken.

13                 And my understanding from director of public works,  
14          from the emergency manager at the time, that the city's water  
15          at the treatment plant was meeting all the standards.

16                 And, in fact, it would not be allowed to be  
17          distributed by the Michigan Department of Environmental Quality  
18          until those standards were met. That's why I said what I said  
19          at the time.

20                 I mean, the Michigan Department of Environmental  
21          Quality is not just regulating the water in Flint. They're  
22          regulating the water across the whole state through these  
23          municipal systems. They're regulating the Detroit Water and  
24          Sewerage District.

25                 So I -- yeah, of course, there were concerns, and

March 30, 2022

1788

1       there were issues. That's why there was a process. But the  
2       water doesn't get turned on until it's met those standards.

3               And then subsequent to that, we've spent this time  
4       talking about the different issues that were identified, the  
5       different steps that were taken.

6               And I tried my best at whatever authority or  
7       influence or opportunity I had to try to advocate for what I  
8       understood would be the best solution at those -- at those  
9       different times.

10              I mean, that's why I ultimately said to the city  
11       administrative before a meeting with treasury officials. We  
12       did a weekly, like, call on key issues. I said, "We need to  
13       go in there and make the case in October of 2015 to switch  
14       back to Detroit."

15              And that was a major difference in what I had been  
16       saying, what I had been working on for those prior months.  
17       But that was my -- that was my conviction at that time.

18              I didn't know, frankly, if it was going to work. I  
19       didn't know who would support that and who wouldn't. But I  
20       just felt like, yeah, look at what we know. This incremental  
21       approach is taking too long. It's probably been tried for too  
22       long.

23              I mean, I very much, you know, practically every day  
24       I think about what I could have done differently, you know.

25              What if I had personally sat down with LeeAnne

1 Walters? Would I have somehow figured something out? There  
2 are these points. You've shown me emails that I haven't seen.  
3 Some of those, I believe, came up in my deposition.

4 So I ask myself that every day. So, I mean, yeah, if  
5 somebody wants to say did I know there were concerns or  
6 issues? Yeah, I sure did. That's what I -- that's what I was  
7 working on. And that's what I continued to reflect on and try  
8 to learn from practically every day since.

9 Q. And it was safety of the water that ultimately led to you  
10 that conclusion, sir?

11 A. Yes. It was the knowledge that we had children in Flint  
12 who had lead poisoning. And that was discovered by a  
13 pediatrician who did research that was prompted by someone, by  
14 doctor and engineer who was concerned about lead in the water.

15 So, I mean, none of this happened immediately. You  
16 know, Dr. Mona Hanna-Attisha will tell you she wanted me to  
17 walk out of that first meeting committed to switching back to  
18 Detroit.

19 MR. CHRISTIAN: Objection, Your Honor. I believe we  
20 have some hearsay here.

21 THE COURT: Okay. Sustained.

22 BY MR. STERN:

23 Q. One last question, Mr. Mayor.

24 If it was safety in September, October 2014 that led  
25 you to the conclusion to switch back to Detroit, do you believe

March 30, 2022

1790

1 you would have come to the same conclusion in February or March  
2 of 2015 if you believed that there was a risk to safety of the  
3 community in Flint?

4 MR. CHRISTIAN: Objection, Your Honor.

5 THE COURT: That's overruled.

6 THE WITNESS: Yes. I know I would have taken it very  
7 seriously. I've gone through these complexities in  
8 decisionmaking. Because that was the reality of being a mayor  
9 at this time, a city in this situation.

10 So there would have been a consideration process.  
11 But I can guarantee you that if there was lead in the Veolia  
12 report, it would have made a difference. So many other things  
13 on that list made a difference.

14 We didn't talk about the carbon filters. That was  
15 more than a million dollar capital investment. It was on that  
16 list, because that was related to public health and TTHMs. So  
17 it would have made a difference. It certainly would have  
18 taken different steps.

19 But that Technical Advisory Committee could have had  
20 that discussion in March and not in October.

21 MR. STERN: Your Honor, this would be a good time for  
22 a break, and I'll review my notes and determine if there's  
23 anything else.

24 THE COURT: Okay. All right. Good. Well, we'll  
25 take about a 15-minute break. And thank you. I just lost my



March 30, 2022

1791

1 mask altogether. That's bad. I've got another one. So  
2 please rise for the jury.

3 (Jury Out)

4 THE COURT: Please be seated.

5 Oh, you can step down, Mr. Walling, and take a break.  
6 And then there will be either a few more questions or  
7 cross-examination after the break.

8 I just wanted to draw your attention to two exhibits  
9 that I think we need to resolve whether they're admitted.  
10 Plaintiffs' Exhibit 460.

11 Mr. Campbell had said you wanted to review some  
12 attachments and determine if those should be excluded or  
13 admitted.

14 MR. CAMPBELL: Yes, Your Honor. I had asked that it  
15 be reviewed. If it was, I forgot to pick it up this morning.  
16 And what the issue is, it's a list of capital projects or  
17 ongoing projects that I think VNA had.

18 And it was the exhibit that had the prediction of a  
19 million dollars of revenue. But there's all kinds of other --  
20 so I will -- I'll get to that.

21 THE COURT: Okay.

22 MR. CAMPBELL: I'm sorry. I should have done it  
23 before.

24 MR. STERN: If you don't mind, which exhibit number  
25 is that?

March 30, 2022

1792

1 THE COURT: 460.

2 MR. STERN: Thank you. Sorry.

3 THE COURT: And then I think that, Mr. Stern, you did  
4 not move for the admission of Plaintiffs' Exhibit 3618. And I  
5 don't actually recall what it was. Oh, it was the photo.

6 MR. MAIMON: Those were the photos.

7 THE COURT: The photos, that's right.

8 MR. STERN: I seek to admit them now.

9 THE COURT: Mr. Christian?

10 MR. CHRISTIAN: Just one question I want to ask is.  
11 The source of the photos, Your Honor, if we might know.

12 MR. STERN: Well, he --

13 MR. CHRISTIAN: I just asked the source of the  
14 photos.

15 THE COURT: Can you take your -- I'm having a hard  
16 time. There you go.

17 MR. CHRISTIAN: The source of the photos, Your Honor.

18 THE COURT: Got it. Okay.

19 MR. STERN: I believe the source of those photos were  
20 from an MLive article. They were included in our original  
21 pretrial order.

22 THE COURT: Yes.

23 MR. STERN: So there's no objections that are  
24 possible now as to foundation.

25 And Mr. Walling identified everybody in the photos

March 30, 2022

1793

1 including himself.

2 MR. CHRISTIAN: I just needed the answer to where  
3 they were from.

4 THE COURT: That would be the answer.

5 MR. CHRISTIAN: No objection, Your Honor.

6 THE COURT: Okay. Terrific.

7 Mr. Erickson.

8 MR. ERICKSON: Your Honor, I guess we would -- we  
9 don't object. But we would reserve the right to admit the  
10 MLive article that they came from.

11 THE COURT: Okay.

12 MR. STERN: Happy -- happy --

13 MR. MAIMON: We'll take a look at it and see if it's  
14 admissible.

15 THE COURT: We can't hear you.

16 MR. STERN: We'll take a look to determine its  
17 admissibility. But that's fine if there was --

18 THE COURT: Okay. But for now, the 3618, the photos  
19 are admitted.

20 (Plaintiff Exhibit No. 3618 Admitted Into Evidence.)

21 THE COURT: And we'll wait to hear back from VNA on  
22 Plaintiffs' Exhibit 460 and whether there are attachments that  
23 aren't relevant to our case.

24 MR. STERN: I have one other exhibit issue, Judge.

25 THE COURT: Oh, what is that?

March 30, 2022

1794

1 MR. STERN: When it came to Tab 93, which was the VNA  
2 report, I had stated that it was previously admitted as  
3 Exhibit 609, but it was actually previously admitted as 46.

4 THE COURT: Okay. Any contradiction to that in your  
5 records? Mr. Christian?

6 MR. CHRISTIAN: We'll check. We can check during the  
7 break and come back to you.

8 MR. STERN: It was certainly admitted. I just think  
9 it was under 46.

10 THE COURT: Okay. Good. All right. Then we'll take  
11 a break.

12 UNIDENTIFIED PERSON: 15 minutes from now, Your  
13 Honor?

14 THE COURT: Yes. Thank you for clarifying that.

15 (Brief Recess)

16 THE COURT: All right. Well, we'll get the jury.

17 So the two issues I have that we'll need to discuss  
18 later today is I think counsel was going to talk about the  
19 schedule going forward in our case.

20 Is there anything to report there?

21 MR. STERN: I think we were just -- there's a few  
22 dates that we would need off based on personal commitments.  
23 And I know Your Honor has previously mentioned we should  
24 discuss that.

25 THE COURT: Yeah.

March 30, 2022

1795

1 MR. STERN: So it wasn't in the realm of what  
2 Mr. Mason had talked about last week.

3 THE COURT: No, just generally.

4 MR. STERN: I'm not sure -- Mr. Maimon normally  
5 communicates directly with the other side. So I'm not sure if  
6 those conversations occurred.

7 THE COURT: We'll find out later. And then the issue  
8 of the video testimony.

9 Mr. Walling, are the city council meetings back in  
10 person now?

11 THE WITNESS: Yes.

12 THE COURT: Oh, good. Are they there? There we go.

13 THE CLERK: All rise for the jury.

14 (Jury In)

15 THE COURT: Okay. Welcome back to the jury.

16 Please be seated.

17 And, Mr. Stern, have you completed your examination?

18 MR. STERN: Mayor Walling, thank you for your time.

19 And, Your Honor, I pass the witness.

20 THE COURT: Okay. Now, what we'll do is go to VNA's  
21 opportunity to cross-examine this witness.

22 MR. CHRISTIAN: And we're just going to distribute  
23 some exhibits, Your Honor, for the parties and for Your Honor.

24 THE COURT: Sure.

25 MR. STERN: I'm fine. Thank you.

March 30, 2022

1796

1 THE COURT: Did you hit your head?

2 MR. STERN: They just hit me in the head with the  
3 box.

4 MR. MAIMON: He'll be okay.

5 MR. STERN: I'm fine.

6 MR. MAIMON: That, you should strike.

7 MR. CHRISTIAN: May I approach the witness, Your  
8 Honor, and the bench?

9 THE WITNESS: Counsel, might I also need these?

10 MR. CHRISTIAN: Not initially.

11 THE WITNESS: Okay.

12 THE COURT: Can -- Mr. Christian, can you take  
13 those --

14 MR. STERN: I'll take the two that we --

15 THE WITNESS: That would be helpful. It's a lot to  
16 manage up here.

17 MR. STERN: Your Honor, would it be okay here if I  
18 left them here for redirect?

19 THE COURT: Oh, sure.

20 MR. CHRISTIAN: So first, may I proceed, Your Honor?

21 THE COURT: Yes.

22 CROSS-EXAMINATION

23 BY MR. CHRISTIAN:

24 Q. So good morning, Mr. Walling.

25 So first of all, I'd just like to -- you have a few

March 30, 2022

1797

1 titles that I can call you by. It could be Mr. Walling, Mayor  
2 Walling, or Professor Walling.

3 Is there one that you prefer?

4 A. I actually would prefer simply Mr. Walling. I, of course,  
5 did hold that position of mayor. But we -- you know, we have a  
6 mayor in Flint right now. So Mr. Walling is fine.

7 Q. Okay. And one of the things I'd like to just begin with  
8 is that stating for the record, I believe we belong to a  
9 networking organization called the Association of American  
10 Rhodes Scholars?

11 A. Yes.

12 Q. And just want to make clear that we haven't met before in  
13 the course of any of their --

14 MR. STERN: Objection.

15 THE COURT: Sustained.

16 BY MR. CHRISTIAN:

17 Q. Have we ever met before, Mr. Walling?

18 A. No.

19 Q. And before this trial and taking the witness stand, did  
20 you meet with Mr. Stern or Mr. Maimon?

21 A. Yes.

22 Q. Okay. And what did you discuss during that meeting?

23 A. We discussed a few of the documents that I had seen during  
24 my deposition. A few photos that were in the PowerPoint slide.

25 Q. Okay. How many times did you meet?

March 30, 2022

1798

1 A. I believe we met on three occasions.

2 Q. And for how much time in total?

3 A. In total? Probably -- probably about four hours.

4 Q. And and could you tell us when you met?

5 A. Over the last approximately 10 days, I believe.

6 Q. All right. And so I'd like to turn to a different topic  
7 now.

8 Mr. Maimon and Mr. Stern sued you for your role in  
9 the Flint Water Crisis; is that correct?

10 MR. STERN: Objection.

11 THE COURT: Overruled. If he knows.

12 MR. STERN: I haven't sued anybody.

13 THE COURT: Right. Okay. That's true. So --

14 BY MR. CHRISTIAN:

15 Q. Were you sued by the plaintiffs in this litigation,  
16 Mr. Walling?

17 A. I know that I was a plaintiff in the initial filings of a  
18 number of different lawsuits. I don't think I knew from the  
19 city attorney's office if this particular case, I was a  
20 plaintiff or not.

21 Q. Okay. So --

22 THE COURT: A defendant.

23 THE WITNESS: I'm sorry, yes. The plaintiffs, right,  
24 filing. If I was a defendant.

25 Thank you, Judge.



March 30, 2022

1799

1 BY MR. CHRISTIAN:

2 Q. So one of the things I'll just -- we're going to be asking  
3 a lot of questions. And sometimes I'll ask questions that are  
4 yes or no, and sometimes it will be short answer or essay.

5 And based on your academic credential, I'll assume  
6 you're good at answering questions like that?

7 MR. STERN: Objection.

8 THE COURT: Just ask questions, and we'll see how it  
9 goes. If there's a problem, you'll appeal to me, and I'll  
10 direct the witness.

11 MR. CHRISTIAN: Okay, Your Honor.

12 BY MR. CHRISTIAN:

13 Q. So I'd like to direct you to Tab 39 of your book. And  
14 that's VNA Exhibit 3102. Please let me know when you have it.

15 A. Yes, I have Tab 39. Looks like one page.

16 Q. Okay. And does this -- does this -- there's a second  
17 page, if you flip over to the backside of that page.

18 And do you see your name anywhere on that page? At  
19 the top left-hand corner?

20 A. Yes, I do. I was seeing if there was more than one. Yes.  
21 Defendant Dayne Walling.

22 Q. And do you recall this as being part of the plaintiffs'  
23 lawsuit against you in this case?

24 MR. STERN: Objection, Judge.

25 THE COURT: What is your objection? Relevance?

March 30, 2022

1800

1 MR. STERN: It's three-fold. Number one, the  
2 document's incomplete --

3 THE COURT: And also there's a motion in limine  
4 regarding a lot of this. So I think you should move on from  
5 this exhibit.

6 MR. CHRISTIAN: And just for the record, we object,  
7 Your Honor.

8 MR. STERN: You're objecting to --

9 MR. CHRISTIAN: Just for the record.

10 THE COURT: You're objecting to my ruling?

11 MR. CHRISTIAN: Yes, Your Honor.

12 THE COURT: That's the nature of -- you know,  
13 sustained.

14 BY MR. CHRISTIAN:

15 Q. So, Mr. Walling, during your direct testimony with  
16 Mr. Stern, he asked you a lot of questions about Flint history.

17 Do you recall that?

18 A. Yes.

19 Q. And he asked you about where your water as a Flint  
20 resident came from -- or Flint residence water came from  
21 between 1974 and 2014; is that correct?

22 A. Yeah. Approximately --

23 Q. Your lifetime?

24 A. Approximately those dates. My lifetime, yes.

25 Q. And you answered that it came from Detroit?

March 30, 2022

1801

1 A. Yes.

2 Q. And that Flint Water Treatment Plant was a backup?

3 A. Yes.

4 Q. Are you aware that at a certain point before Flint started  
5 getting its water from the DWSD that the Flint River was a  
6 source of water?

7 A. Yes.

8 Q. You testified to that?

9 A. Yes. The location of the plant being at that river bank.

10 Q. Right. So I'd like to ask you to turn to tab 57.

11 A. Yes.

12 Q. It is -- do you recognize this document at all?

13 A. It looks familiar.

14 Q. Okay. So -- and during the course of your time as mayor  
15 of Flint, you've come across a lot of documents related to  
16 Flint, correct?

17 A. Yes, sir.

18 Q. And I believe you testified that you're sort of a history  
19 buff of Flint, as well?

20 A. Yes.

21 Q. So is it fair to say that this document may have -- you  
22 may have come across it, you know, either in your historical  
23 studies or as the mayor of Flint?

24 A. It looks -- it looks familiar. I can't recall a specific  
25 time when I reviewed this document.

March 30, 2022

1802

1 Q. Okay. Would you turn to page 5 of the document, please?

2 A. Yes. And is the page number of the half page of the  
3 original 5?

4 Q. Yes.

5 A. Okay.

6 Q. And you see this talks about -- well, actually, I just  
7 want to make sure I'm giving you -- okay. Okay. So, actually,  
8 let's turn to page 10 on the half page.

9 A. Yes.

10 Q. So without reading this document after you get a chance  
11 to, you know, familiarize yourself with it a little bit, this  
12 is talking about where the water from the Flint River comes  
13 from, correct?

14 MR. STERN: Objection. Hearsay. And I asked him  
15 some questions about chemicals, and they were objected to.

16 THE COURT: Can you tell me where you're going with  
17 this document?

18 MR. CHRISTIAN: Your Honor, it's getting to the idea  
19 that the Flint River has been used in the past.

20 THE COURT: Oh. Well, he's testified to that.

21 MR. CHRISTIAN: Yes.

22 BY MR. CHRISTIAN:

23 Q. And your parents are from Flint? Or grew up in Flint?

24 A. Yes. My mother was born in Flint. She's turning 75 this  
25 summer. And my late father came with his family to Flint in --

March 30, 2022

1803

1       when he was approximately elementary school, yes.

2       Q.    So is it fair to say that they were in Flint before the  
3       switch from Flint to DWSD?

4       A.    Yes.

5       Q.    And I'm not trying to date you in terms of your age, but  
6       you remember a time when people didn't buy water in bottles  
7       from the store? In your lifetime?

8               MR. STERN: Objection. Relevance.

9               THE COURT: Yeah. Sustained.

10              THE WITNESS: Oh, I'm sorry, Judge.

11              THE COURT: Let me just ask you --

12              MR. CHRISTIAN: We were --

13              THE COURT: Mr. Christian, hold on.

14              MR. CHRISTIAN: Yes.

15              THE COURT: This book, the date seems to start in  
16       1955 -- stop in 19 -- so this is a book from the 50's?

17              MR. CHRISTIAN: Yes, Your Honor. And actually, it's  
18       because it's an ancient document more than 20 years old, it's  
19       actually admissible.

20              THE COURT: I'm not worried about that. I think we  
21       should move on.

22              Do you want it admitted? I just am trying to --

23              MR. CHRISTIAN: Yes, I will move to admit it, Your  
24       Honor.

25              THE COURT: Okay.

March 30, 2022

1804

1 MR. CHRISTIAN: I move to admit VNA 4894 into  
2 evidence.

3 MR. STERN: Objection. Hearsay.

4 THE COURT: I'll go ahead and accept it.

5 But -- and could you just describe it for the jury?

6 (Plaintiff Exhibit No. 4894 Admitted Into Evidence.)

7 MR. CHRISTIAN: It is a document entitled, "The Water  
8 Supply of Flint, Michigan."

9 THE COURT: Okay.

10 MR. CHRISTIAN: And it also says, "City of Flint  
11 Division of Water Supply, a Municipally Owned Corporation."

12 THE COURT: Okay. And it's a book printed in the  
13 '50s?

14 MR. CHRISTIAN: Yes.

15 MR. STERN: Did he say yes?

16 MR. CHRISTIAN: It says 1955.

17 THE COURT: Well, I don't know. I just saw that it  
18 stopped the history at '55. So I thought, "Well, maybe it was  
19 after that."

20 MR. CHRISTIAN: So after 1955, Your Honor.

21 MR. STERN: I mean, Judge, we'll stipulate that prior  
22 to 1955 --

23 THE COURT: Right.

24 MR. STERN: -- the Flint River was used as a water  
25 source, and he testified to that.

March 30, 2022

1805

1 THE COURT: I think we can just do that. So we've  
2 all agreed. I think everybody is aware that the Flint River  
3 was a water source in the '60s. It switched to the Detroit  
4 Water and Sewerage Department supply. And then in 2014, back  
5 to the Flint River.

6 MR. CHRISTIAN: Okay. And so this has been admitted  
7 into evidence, Your Honor?

8 THE COURT: Sure.

9 MR. STERN: We object.

10 THE COURT: Yeah. It's just -- but we're going to  
11 move on from it.

12 MR. CHRISTIAN: Right. So there -- on a different  
13 topic within this, Your Honor, there is a page that talks  
14 about decisions with respect to water sources.

15 THE COURT: In some point in the '50s?

16 MR. CHRISTIAN: At the point in time of this  
17 document, Your Honor.

18 THE COURT: Before our witness was born. Okay.

19 MR. STERN: Your Honor, just for the sake of clarity  
20 in the record, the only date that I see on this document is on  
21 page 25. And it says, "Finished in 1955."

22 THE COURT: Right.

23 MR. STERN: There's no date --

24 MR. CHRISTIAN: Your Honor --

25 THE COURT: Just let him finish.

March 30, 2022

1806

1 MR. CHRISTIAN: This has been admitted into evidence,  
2 correct?

3 THE COURT: Yes. But I think we need to move on.  
4 Because we're not going to really go back --

5 MR. CHRISTIAN: Your Honor, may I ask you --

6 THE COURT: Stop. Stop talking. We'll get to know  
7 one another. But if I start talking, you'll have to stop  
8 talking.

9 And so we need to move on. Because we know that this  
10 is from the '50s and so on. We don't know the title of the  
11 book. We don't know who authored it. We don't know anything  
12 about it. But still -- yet and still, it's an ancient  
13 document. So here it is.

14 So let's move on to your next area, I think.

15 MR. CHRISTIAN: And my next area is in this document.  
16 So I'd ask if Your Honor preview page 22, and actually half  
17 page 22 in the top left-hand corner. And if the witness  
18 would --

19 THE COURT: Just a minute. Okay.

20 MR. CHRISTIAN: May I publish that portion, Your  
21 Honor?

22 THE COURT: Go ahead.

23 MR. STERN: Objection. This is hearsay within  
24 hearsay.

25 MR. CHRISTIAN: One it's admitted, is it hearsay,



March 30, 2022

1807

1 Your Honor?

2 THE COURT: No. It can still be hearsay. But your  
3 objection is noted. And I'll permit it.

4 MR. STERN: Okay.

5 BY MR. CHRISTIAN:

6 Q. Okay. So would you take a look at page 22, Mr. Walling?

7 A. Yes.

8 Q. And the top left-hand corner, I'm going to read it, and  
9 I'll ask you if I read it correctly.

10 It says, "The question is often asked, 'Why did not  
11 the city go to the Lake Huron for its new water supply instead  
12 of building the dam and reservoir on the Flint River?'"

13 Did I read that correctly?

14 A. I believe it's "raw water."

15 Q. "Raw water." Thank you.

16 So assuming that this, given the date of this  
17 document before your time as mayor, the question about where to  
18 get water for Flint River was something that people asked  
19 about, based on this document?

20 A. Yes.

21 Q. Okay. Now, we've already established that you did testify  
22 about the history of Flint. And that your parents spent some  
23 time growing up in Flint?

24 A. Yes.

25 Q. And based on that knowledge, are you aware of any lead

March 30, 2022

1808

1 crisis during the pre-DWSD days back in the '50s and '60s in  
2 Flint?

3 MR. STERN: Objection. Relevance.

4 THE COURT: Overruled.

5 THE WITNESS: I'm -- I'm not. I understand in  
6 general, you know, concerns across the country with lead  
7 paint, lead in soils from especially when lead was in  
8 gasoline, before that was banned. That's why it all says  
9 "unleaded" now at the pump. So I'm familiar with that in  
10 general.

11 I'm not recalling anything specific about Flint.

12 BY MR. CHRISTIAN:

13 Q. Okay. And so you said you're familiar with issues with  
14 lead.

15 Did those predate your time as mayor, your knowledge  
16 of issues arising with respect to lead?

17 A. Yes.

18 Q. So I'd now like to direct your attention to your time as  
19 mayor. And I know you've gone over it a bit with Mr. Stern, so  
20 I'm not going to belabor it. But I just want to ask a few  
21 questions to make sure I'm clear about some of the answers.

22 So first of all, you were elected in 2009; is that  
23 correct?

24 A. Yes.

25 Q. And who was the governor at that point in time?

March 30, 2022

1809

1 A. The governor was Governor Jennifer Granholm.

2 Q. And then what powers -- I want to make clear what powers  
3 you held as governor -- excuse me -- as mayor. I'm sorry to  
4 promote you there -- in 2009 before your reelection?

5 A. Right. What powers I held under -- so this would be under  
6 the city's charter.

7 Q. Yes.

8 A. So the city adopted a charter in actually 1974, so same  
9 year that I was born. It has subsequently been changed. So if  
10 anyone takes a look at this, you'll see it was -- we had a  
11 charter commission that changed the charter.

12 But I operated under the 1974 city charter. It was  
13 what's commonly described as a strong mayor system. So I was a  
14 full-time chief executive for the City of Flint Municipal  
15 Corporation.

16 It delineates strong responsibilities for our city  
17 council, as well. I've sometimes described it to people as a  
18 strong mayor-strong council system.

19 So as mayor, I could appoint a number of -- a handful  
20 of executive staff who did not have to be approved by the city  
21 council. That would be, for instance, a director of human  
22 resources. Like I mentioned to Ms. Donna Poplar earlier.

23 That would be an appointment I could make to that  
24 position.

25 Then there were a handful of positions that were

March 30, 2022

1810

1 called department heads. And those were positions that had to  
2 be confirmed by a majority vote of the nine-member city  
3 council.

4 So that would like a director of public works,  
5 director of planning, public safety. So a chief of police. A  
6 chief of the fire department.

7 You know, the titles could change a bit, but the  
8 charter laid out those general authorities. So the mayor has,  
9 first and foremost, that ability to create a management team  
10 for the city. The mayor has a responsibility to submit a  
11 budget to city council each year, each spring, because we have  
12 the July 1 to June 30 fiscal year.

13 There's some responsibilities related to that budget.  
14 There are responsibilities then to spending that the city  
15 council has to approve.

16 So at the time that I was in my first term, I believe  
17 it was any expenditure over \$2,000 had to be approved  
18 individually by the city council. That's what I meant by a  
19 strong council.

20 Because when you're trying to run \$170 million  
21 operation and you have to go to a nine-member body for any  
22 expenditure over, like, \$2,000, you're really jointly  
23 governing.

24 So there were nine city council members and myself to  
25 provide for a state of the city address.

March 30, 2022

1811

1           Those would be the main items. There probably are  
2           some others in the charter that relate to, you know, again,  
3           swearing into office, when a new mayor comes in, what happens  
4           when the position's vacant.

5           Those things would be related to the office of the  
6           mayor, as well.

7           Q. Thank you.

8           So and there came a time when you were reelected in  
9           November of 2011?

10          A. Yes.

11          Q. And you testified about what that day was like in terms of  
12          getting a call. And then the governor making a statement with  
13          respect to emergency manager?

14          A. Yes. And the financial -- the statement of financial  
15          emergency that then would allow him under the law to appoint an  
16          emergency manager.

17          Q. And just for the record, so -- and then at that point in  
18          time, when did that take effect?

19          A. The financial emergency, I believe we received  
20          correspondence maybe even that same day. The first emergency  
21          manager, Mr. Mike Brown, was appointed approximately a month  
22          later in early December.

23                 So for that month, because we had no directive, the  
24          city council and I continued to operate under normal charter  
25          provisions.

March 30, 2022

1812

1 Q. And so when you were mayor between 2009 and your  
2 reelection -- and I know -- I hate to ask this question.

3 What was your compensation of mayor at that point in  
4 time?

5 A. It was just over a hundred thousand. Maybe 102, 103,000.  
6 Somewhere right in there.

7 Q. Okay. And once Mr. Brown was appointed emergency manager,  
8 what happened to your compensation?

9 A. So one of his initial orders was to remove authority and  
10 compensation from myself and city council. So for a period of  
11 a month or so, I had no compensation from the city.

12 The city attorney believed in terms of compensation  
13 it was, you know, it was like a separation, because it zeroed  
14 out that compensation.

15 I still came into the office each day. I met with  
16 Mr. Brown and others. And -- but I did not receive any  
17 compensation for that time period.

18 Q. And a moment ago, you were testifying about the different  
19 powers you had as mayor through the charter?

20 A. Yes.

21 Q. When Mr. Brown became emergency manager, what happened to  
22 those powers?

23 A. Those powers transferred by the appointment of the  
24 governor to an emergency manager. The broad provision in the  
25 law says the emergency manager shall act as the mayor and the

March 30, 2022

1813

1 council. Something to that effect.

2 When Mr. Brown restored a portion of my compensation,  
3 that four or five weeks later, that was accompanied by an  
4 order that listed a set of responsibilities that I was then  
5 supposed to, you know, focus on as mayor.

6 Q. Okay. So four or five weeks later when Mr. Brown  
7 reinstated part of your compensation, how much did he  
8 reinstate?

9 A. It was approximately 50-some thousand.

10 Q. Okay. And tell us about the responsibilities that he  
11 reinstated at that time.

12 A. So my responsibilities were to citizen services. So I  
13 continued my -- I continued my weekly open office hours, 10:00  
14 to noon on every Wednesday.

15 And there were also people who just sent regular  
16 letters or emails or called the office. So I continued to work  
17 on citizen services.

18 I would receive those and then distribute them to  
19 various staff or bring it to the attention of the emergency  
20 manager.

21 I was authorized to continue to serve on a number of  
22 boards. So there are a number of organizations in the city  
23 like the city's Downtown Development Authority. Its by-laws  
24 say the mayor shall be the chairperson.

25 Mr. Brown could have assumed that authority under the

March 30, 2022

1814

1 state law in this order. And we could look at it. But he  
2 detailed those boards that I would continue to serve on.

3 Karegnondi Water Authority, the Downtown Development  
4 Authority, the Economic Development Corporation for the City  
5 of Flint. The Flint and Genesee Chamber of Commerce Operating  
6 Board. There were some others.

7 It's a major -- major responsibility of the office  
8 was to coordinate with those different entities. So I  
9 continued in that capacity. I was, through those boards and  
10 my own interest, I was very involved in various economic  
11 development efforts.

12 I had a Friday morning weekly jobs meeting in my  
13 office where I met with the representative of the Flint and  
14 Genesee Chamber of Commerce. Possibly a staff from the  
15 Michigan Economic Development Corporation.

16 Brought in different city staff. So I continued to  
17 have that weekly jobs meeting.

18 You know, there could come a time where the city was  
19 needing to do something officially that would require some  
20 other people's actions. But citizen services, boards,  
21 economic development, and then also planning.

22 I mentioned my work over the years with the city's  
23 long-term comprehensive and master plan. So I had been a very  
24 kind of vocal advocate, even within office, for the city  
25 starting this comprehensive master planning process,



March 30, 2022

1815

1 rebuilding a planning department at the city.

2 We were probably about two-thirds of the way through  
3 a process to hire a chief planning officer, I believe. And  
4 Mr. Brown had me continue in that role of facilitating that  
5 process.

6 We had a major federal grant from one of  
7 President Obama's on sustainability communities that we were  
8 beginning to implement.

9 So those were -- I apologize if that was too much  
10 detail. But that's what my responsibilities were. I took  
11 them very seriously.

12 Q. And just to be clear.

13 With respect to the economic development efforts or  
14 any of these roles, you were not allowed to sign any contracts;  
15 is that correct?

16 A. Yeah. I would not have been in position to sign  
17 contracts. That was a different process, yeah. Most of this  
18 was external. It obviously relates to the city, like if  
19 there's economic development in businesses and so on.

20 But the orientation was really towards external  
21 community work. And then I would bring, you know, that  
22 information or those action items back in to senior staff.

23 Q. And there came a time that Mr. Kurtz, Edward Kurtz became  
24 the emergency manager, correct?

25 A. Yes.

March 30, 2022

1816

1 Q. And his term approximately was from August of 2012 to June  
2 of 2013; is that correct?

3 A. Yes, that sounds right.

4 Q. And then after Mr. Kurtz, Mr. Brown came back in 2013 and  
5 served until about October; is that correct?

6 A. Yes. And Mr. Brown had been city administrator under  
7 Mr. Kurtz. That's a position in our city charter, the chief  
8 operating officer for the city. The most senior appointed  
9 staff. So that's a position in our charter.

10 Q. And then Mr. Earley came on after Mr. Brown from about  
11 October of 2013 until roughly the middle of January of 2015?

12 A. Yes.

13 Q. I'd like to show you what -- ask you to take a look at  
14 Tab 52, which is marked as Plaintiffs' Exhibit 2609.

15 Do you recognize this document?

16 After you've had a chance to look at it.

17 A. I believe I saw this. This is not a city document. This  
18 is a State of Michigan document. And it's the emergency  
19 manager services for Mr. Darnell Earley. I believe I did see  
20 this at some point.

21 Q. And that was during the time you were mayor of the City of  
22 Flint?

23 A. Yes.

24 Q. And was it at the time when Mr. Earley was emergency  
25 manager?

March 30, 2022

1817

1 A. This is dated -- Mr. Earley's signature is October 3,  
2 2013. That's consistent with my understanding.

3 MR. CHRISTIAN: Your Honor, I move to admit  
4 Plaintiffs' Exhibit 2609.

5 MR. STERN: No objection.

6 MR. ERICKSON: No objection.

7 THE COURT: Okay. It's received.

8 (VNA Exhibit No. 2609 Admitted Into Evidence.)

9 BY MR. CHRISTIAN:

10 Q. So what I'd like to do if you wouldn't mind is if you look  
11 at Section 1.3. It has the heading "Duties."

12 Would you do me the favor of reading what the duties  
13 of the emergency manager are for the jury?

14 A. Yes. So 1.3, "Duties. The emergency manager shall  
15 possess all the powers and duties authorized under the act" --  
16 sorry -- "noted above Public Act 436 of 2012, including those  
17 specifically related to local governments.

18 "In addition, the emergency manager shall work  
19 cooperatively with the office of the governor and the state  
20 treasurer. The emergency manager agrees to continue to keep  
21 these officials informed of major initiatives to be undertaken  
22 in furtherance of this contract before their public  
23 announcement."

24 Q. Thank you.

25 And if you turn to page 2 in Section 3.2, what was

1 the compensation of the emergency manager?

2 A. Item 3.2, "Salary," reads, "The emergency manager's salary  
3 for services rendered under this contract shall be 180,000 per  
4 year."

5 Q. And let's look at Section 4.1, entitled, "Staff."

6 Would you read the first sentence of that, please?

7 A. Yes. 4.1, "Staff. The emergency manager may, as provided  
8 in the act, appoint additional staff as necessary to fulfill  
9 the obligations of the emergency manager's appointment and  
10 duties under this contract."

11 Q. And was this consistent with your understanding of the  
12 powers or some of the powers of the emergency manager?

13 A. Yes.

14 Q. And during the time that Mr. Earley was emergency manager,  
15 did there come a time when he actually appointed staff within  
16 the -- to support him?

17 A. Well, of course, we had senior staff who were appointed.  
18 I think most of the senior staff continued. I believe one  
19 appointment that Mr. Earley made was the appointment of a new  
20 chief of police. Chief James Tolbert.

21 Q. And Section 4.3. Would you read the first sentence of  
22 that?

23 A. Yes. First sentence?

24 Q. Yes, please.

25 A. 4.3, "Security. The emergency manager will be entitled to

March 30, 2022

1819

1 receive security protection in connection with the emergency  
2 manager's duties under this contract."

3 Q. Do you recall whether Emergency Manager Earley actually  
4 appointed security for himself?

5 A. Not that I recall.

6 Q. So did there come a time when Mr. Earley left the role of  
7 emergency manager approximately January of 2015?

8 A. Yes. Mr. Earley -- I wasn't literally in the room when  
9 this happened. I was next door, because my office opens into  
10 that conference room where they held the press conference.

11 But state officials came to Flint. It was announced  
12 that Mr. Earley was leaving the emergency manager position in  
13 the City of Flint.

14 And he was moving to be the emergency manager for  
15 Detroit Public Schools, which was also under emergency  
16 management under this same Public Act of 436 of 2012.

17 Q. And excuse me.

18 Gerald Ambrose succeeded Mr. Earley?

19 A. Yes. And then Mr. Ambrose -- I think it was even  
20 announced at that same time. Mr. Ambrose had been serving as  
21 the city's finance director, and he was appointed emergency  
22 manager for Flint under this same state law.

23 Q. And his term lasted until April of 2015?

24 A. Yes. End of April 2015.

25 Q. And during the course of these transitions from one

March 30, 2022

1820

1 emergency manager to the next, were you consulted and asked  
2 your opinion on who should be the next emergency manager?

3 A. No.

4 Q. And is it your understanding that Governor Snyder made the  
5 decision about who should be the emergency manager?

6 A. Yes. It is -- the law says the governor appoints.

7 Q. So I'd like to direct you to -- well, just a moment here.

8 And when Mr. Ambrose left the role, did you come  
9 back --

10 THE COURT: Left where?

11 BY MR. CHRISTIAN:

12 Q. -- left the role of emergency manager in April of 2015,  
13 did you come back as mayor and resume with your powers to lead  
14 the city?

15 A. In part.

16 Q. Okay. Tell us what part you received.

17 A. All right. So there were two major changes. The  
18 emergency manager under the state law had the ability to issue  
19 orders that stayed in effect, even as that individual -- as  
20 there would be no person serving as emergency manager in Flint.

21 So effectively, the governance of the City of Flint  
22 became the city of charter in our regular city code, unless  
23 modified by an emergency manager order.

24 And there was one -- one major order that affected  
25 the operations of the city. And that was that the city

March 30, 2022

1821

1 administrator, whose position I said is in the charter, the  
2 chief operating officer normally appointed by the mayor and  
3 city council.

4 That that individual would become responsible for  
5 department head decisions.

6 So that emergency manager order strengthened the city  
7 administrator's role within city governance. The city was to  
8 consult with the mayor under that order, but it was no longer  
9 my prerogative to hire or fire someone.

10 I could appeal to the city administrator. The city  
11 administrator could also not be removed by the mayor, the way  
12 it normally would be under the charter.

13 The city administrator could only be removed by joint  
14 action of the mayor, the city council, and this new transition  
15 advisory board.

16 So with the exit of the emergency manager, the state  
17 law imposed an appointed, I believe, three-member transition  
18 advisory board. It was headed by Fred Headen, who was an  
19 employee of the Michigan Department of Treasury.

20 And that body met, I think, approximately once a  
21 month. So in order for the City of Flint to take official  
22 action, to enter into a contract, to pass a new statute, you  
23 know, what have you.

24 It would go from a city administrator resolution to a  
25 city council vote. And then whatever made it through city

1 council would go onto the docket of the Transition Advisory  
2 Board.

3 There were some other orders about various matters.  
4 But those were the two major changes to the structure of City  
5 of Flint government.

6 Q. So sounds a bit complex?

7 A. Yes. And there were probably court challenges to many of  
8 these things in front of judges across the state as it was  
9 throughout this process.

10 So you always just had to pay attention to, you know,  
11 what had been passed, what was in place. Try to work from that  
12 at that particular time.

13 Q. So you mentioned the city administrator.

14 Who appointed that individual?

15 A. The city administrator, Natasha Henderson, I believe was  
16 appointed near the end of Mr. Earley's time. And then she -- I  
17 don't know if she had actually started her first day while he  
18 was still there, but right about that time.

19 And then she served throughout my time in office,  
20 continued for some time under Mayor Dr. Karen Weaver.

21 Q. So just to be clear, Mr. Ambrose appointed the city  
22 administrator?

23 A. I think Mr. Earley did. But then Mr. Ambrose didn't  
24 change it. You know, it just -- unless you were removed, you  
25 just stayed appointed.



1 Q. And you mentioned the Transition Advisory Board.

2 A. Yes.

3 Q. Three members?

4 A. It started as three. There may have been five at some  
5 point.

6 Q. And Governor Snyder appointed the members of that body?

7 A. You know, I mean, we should look at the law. It might --  
8 it might say the treasure -- you know, the treasurer's  
9 appointed by the governor. So I thought of it as a governor's  
10 appointment.

11 Q. So is it your testimony that it was either the governor or  
12 the treasurer?

13 A. That's my recollection, yeah.

14 Q. And the treasurer was appointed by the governor?

15 A. Yes.

16 Q. And so you described a fairly complex procedure for  
17 getting things done after Mr. Ambrose left. So what I want to  
18 do just to get a little clarity, I'm just going to go through  
19 some of the powers you mentioned earlier and see which -- you  
20 know, which ones you had at that point in time.

21 So as of Mr. Ambrose's departure, could you appoint  
22 executive staff?

23 A. No.

24 Q. Could you appoint department heads?

25 A. No.

March 30, 2022

1824

1 Q. Did you have authority over the management team?

2 A. No. I would consult with the city administrator.

3 Q. And were you able to develop the budget at that point in  
4 time?

5 A. I believe that was also a duty of the city administrator.  
6 I certainly continued to have involvement. And we tried to  
7 follow both the orders as well as the charter.

8 So I believe I made the presentation to city council,  
9 even though it would have been under the emergency manager's  
10 order, technically the city administrator's responsibility to  
11 develop the document.

12 Q. So the city administrator developed the budget, at that  
13 point in time?

14 A. And then I presented it, yes.

15 Q. And what about spending less than \$2,000 at that point in  
16 time?

17 Did you have authority to do that?

18 A. No. And that had been changed. Now, the administration  
19 through the city administrator, I believe the limit was now  
20 \$30,000.

21 So the administration could take action, you know, at  
22 a higher amount of money than it could under the traditional  
23 charter and statutes.

24 Q. Okay. So the city administrator could spend up to  
25 \$30,000?

March 30, 2022

1825

1 A. I think that was the number. And I'm sorry. All of these  
2 things would be in documents, if it makes a difference.

3 Q. And to go above \$30,000, did the city administrator need  
4 to seek approval somewhere else?

5 A. Yeah. Then it would go through the resolution process, as  
6 we called it. So a senior staff or department head would  
7 develop a resolution, could come directly from the city  
8 administrator, go through legal and financial review, then to  
9 the city clerk, then to the city council.

10 And then whatever the city council passed was then  
11 moved to the transition advisory board docket.

12 Q. And when you left office in November of 2015, the  
13 Receivership Transition Advisory Board was still in place; is  
14 that correct?

15 A. Yes. Yes, it was.

16 Q. And just want to direct your attention back to the  
17 emergency managers really quickly.

18 Is it your understanding that the emergency manager  
19 had discretion to approve expenditures up to \$50,000?

20 A. Yes. That was -- that was what was written into the  
21 relationship, the protocols between an emergency manager and  
22 the State Department of Treasury.

23 Q. And above that amount, the emergency manager had to get  
24 approval from the State Department of Treasury?

25 A. Yes. And it had to be an official approval. In practice,

March 30, 2022

1826

1 it seemed to me like the emergency manager was, you know,  
2 consulting with treasury staff on practically everything.

3 But there was a formal approval process required for  
4 those expenditures over \$50,000 on an annual basis.

5 Q. And so I'd like to direct your attention, again, to the  
6 authorities you -- and powers you had as governor -- excuse me,  
7 as mayor. I'm sorry to keep saying that.

8 If you turn to Tab 2 of the binder, which is VNA  
9 trial exhibit -- as premarked for identification as VNA trial  
10 Exhibit 598.

11 Do you recognize this document?

12 A. Yes. We looked at it previously in this room.

13 Q. Sure. And it is --

14 MR. CHRISTIAN: Your Honor, I move to admit --

15 THE COURT: I think it's already admitted, right?

16 MR. STERN: I admitted it yesterday.

17 THE COURT: Yeah. It's already an exhibit.

18 BY MR. CHRISTIAN:

19 Q. So this is when Emergency Manager Earley made you  
20 responsible for day-to-day operations of the public works  
21 department?

22 A. Yes. This was dated June 20, 2014.

23 Q. So in terms of the authorities that you laid out as --  
24 that you had as the mayor, what, if any, new authorities did  
25 you gain by this order?

March 30, 2022

1827

1 A. So the emergency manager looked to me to take the weekly  
2 report from these two departments that are mentioned on the top  
3 of the second page. That first page is all just pursuant to  
4 436.

5 Department of Planning and Development, that's the  
6 new department that is working on the comprehensive master  
7 plan and also oversees the city's department of community and  
8 economic development, the development block grant funds, the  
9 planning commission, and building and safety functions and  
10 inspections.

11 So that was one department head. That was Ms. Megan  
12 Hunter. And I took that same report from Mr. Howard Croft,  
13 who was director of the Department of Public Works.

14 That was the department that included utilities,  
15 water, sewer, water service center, transportation. I think  
16 parks may have been under planning and development at this  
17 time. Transportation was still doing street, trees, traffic  
18 engineering.

19 So I took weekly reports from both of those directors  
20 about their operations. What were they working on. What was,  
21 you know, happening with any issues maybe with staffing.

22 And then I was meeting at that same time  
23 approximately weekly with the emergency manager, Mr. Earley,  
24 and would go over those notes or those reports.

25 Q. So just to be clear, you took these reports.

March 30, 2022

1828

1                   Were these oral meetings?

2       A.    Yes.

3       Q.    So in-person meetings?

4       A.    In-person meetings, yes, in my office.

5       Q.    And did they occur religiously every week?

6       A.    Close.  Yeah.

7       Q.    And during the course of your meetings with Mr. Croft, did  
8       you get opportunities to ask questions about specific issues  
9       with respect to that department?

10      A.    Yes.

11      Q.    And you could ask specific questions with respect to the  
12      Flint Water Treatment Plant?

13      A.    Yes.  Water Treatment Plant, these main breaks we've been  
14      talking about.  Different issues that are coming up in  
15      transportation.  You know, street sweeping.  Leaf pickup.  Yes,  
16      yes, I would certainly ask questions.

17      Q.    And did you get an opportunity to meet with the employees  
18      at the Flint Water Treatment Plant?

19      A.    Yes.  I did one meeting at the Flint treatment plant in  
20      the fall of 2014.

21      Q.    So one meeting?

22      A.    Yes, one meeting.  I walked through on a couple -- at  
23      least one other occasion.  But this was an actual -- this was  
24      like an employee meeting where Mr. Croft, you know, made sure  
25      those different groups knew that I would be there and that I'd

March 30, 2022

1829

1 be coming and asking questions.

2 And it was -- it was part of, you know, my expanded  
3 work under this order.

4 Q. And did there come a time during your time as mayor where  
5 you stopped having these weekly meetings?

6 A. Yes. So with the -- with the appointment of the city  
7 administrator, there was a new structure than what we had in  
8 2014. So I believe at this time in the second half of 2014,  
9 there was no one in the city administrator's position.

10 So I had mentioned Mr. Brown serving as city  
11 administrator under Mr. Kurtz. Mr. Earley, you know,  
12 effectively operated as the city administrator. He was a  
13 trained city manager himself.

14 So I took these couple department reports. He took  
15 the other department reports; chief of police, legal, HR,  
16 etcetera.

17 With the hiring of Natasha Henderson, there was an  
18 emergency manager order that detailed that position's  
19 responsibilities. And at that point, Ms. Henderson took all  
20 of these department head reports.

21 Q. Do you remember when that was?

22 A. Of course, there would be a document on this. I mean,  
23 this is what January-February 2015, right about in that.

24 Q. All right. So if you weren't happy with a report you  
25 received from Mr. Croft, what, if any, actions could you take?

March 30, 2022

1830

1 A. I could, you know, express my displeasure to Mr. Croft  
2 which I would do on occasion when I felt it was warranted. And  
3 then I would take that concern to the emergency manager. And  
4 that was where -- I mean, you saw this is a very short order.

5 And I came to see, you know, what the practical  
6 limits of what I had been assigned was.

7 So if -- when employees at the water plant talked  
8 about -- were running, you know, low on a particular chemical,  
9 I remember there being something about, "We want to make sure  
10 we have this chemical," then I couldn't write that resolution  
11 to spend more money on that need that I became aware of.

12 I would take that to the emergency manager. And  
13 Mr. Earley would effectively tell me, "Thank you, very much."

14 So whether that involved personnel or legal matters  
15 or other kind of HR, that -- I understood what the  
16 responsibility was.

17 And I would bring those matters to his attention, and  
18 he would be the one who could then act on those.

19 Q. So you couldn't fire Mr. Croft if you would like to?

20 A. Correct.

21 Q. Could you contribute -- did you conduct evaluations of  
22 Mr. Croft or any other treatment plant personnel?

23 A. I did not.

24 Q. So I'm going to move to a different topic. And I'd like  
25 you to look at Tab 3, which is VNA Exhibit 76.



March 30, 2022

1831

1                   This document's dated November 7 of 2011; is that  
2 correct?

3 A. Yes.

4 Q. And you've seen this before.

5                   Did you receive a time -- did you receive a copy on  
6 the date -- on or around the date of November 7 of 2011?

7 A. Yes. And I see on the last page myself, city council,  
8 speaker of the -- the Michigan House and Senate majority leader  
9 in the state. Yes. So yes, I did see this at that time.

10                  MR. CHRISTIAN: Your Honor, I move to admit VNA  
11 Exhibit 76 into evidence.

12                  MR. STERN: No objection.

13                  MR. ERICKSON: No objection.

14                  THE COURT: Okay. It's received.

15                  (VNA Exhibit No. 76 Admitted Into Evidence.)

16 BY MR. CHRISTIAN:

17 Q. And so this document, Exhibit 76, VNA Exhibit 76, it's  
18 titled, "Report of the Flint Financial Review Team"; is that  
19 correct?

20 A. Yes.

21 Q. And the name of the team members are at the top of the  
22 page on the right; is that correct? Or top of the page; is  
23 that correct?

24 A. Yes. I'm going through the names. I understood all of  
25 those individuals to be on the financial review them.

March 30, 2022

1832

1 Q. And they were members of the Snyder administration?

2 A. No. They were, I think, technically appointed by the  
3 state treasurer. I don't know all of the individuals well,  
4 although we may have met.

5 Mr. Earley was serving as the city manager in Saginaw  
6 at the time. Mr. Robert Emerson was, I believe, with a private  
7 company. He had been a long-time state legislature from Flint  
8 who had served as Governor Granholm's budgets director for a  
9 period of time.

10 Mr. Headen, I did know he was a long-time employee at  
11 the State Department of Treasury. We had a common connection  
12 of being Michigan State University James Madison College  
13 alumni.

14 Brom Stibitz worked for State Treasurer Dillon.

15 So I was more than familiar with about half of these  
16 individuals. But they -- at least some of them were not part  
17 of the Governor Snyder administration in a formal way.

18 Q. So they worked for the Department of Treasury, as you  
19 understand it?

20 A. I don't know what the conditions of their participation  
21 was, if it was compensated or a matter of public service. I'm  
22 sure they had some contract to perform a duty under Public Act  
23 -- at this time it would have been Public Act 4.

24 Q. So let's take a look at the document, specifically the  
25 first paragraph. If you look to the third line from the

1 bottom, there is -- starts with "a local government."

2 Do you see that?

3 A. Yes.

4 Q. Would you please read the rest of that paragraph from that  
5 point?

6 A. Yes.

7 "A local government financial emergency exists within  
8 the City of Flint and that no satisfactory plan exists to  
9 resolve that emergency. Therefore, the review team recommends  
10 the appointment of an emergency manager."

11 Q. And so this essentially is a document you received  
12 surrounding your -- surrounding the appointment of emergency  
13 manager; is that fair to say?

14 A. Yes.

15 Q. And this was a financial event; is that correct?

16 A. Yes. This -- that language comes from what's required  
17 under Public Act 4.

18 Q. So now I'd like to --

19 MR. CHRISTIAN: Just for Your Honor's knowledge, I  
20 think we're a little early for the break, but I'm getting  
21 ready to switch to a different topic, just so you know.

22 THE COURT: Go ahead. If everyone's okay, we'll just  
23 keep going.

24 BY MR. CHRISTIAN:

25 Q. So I'd like to turn your attention to the Karegnondi Water

1 Authority, KWA, I guess, it's commonly known?

2 A. Yes.

3 Q. In March of 2013, that was roughly a year before the  
4 switch to the Flint River, you recall the city council voting  
5 to join the KWA?

6 A. Yes.

7 Q. And that vote was what, 7 to 1?

8 A. Yes. I think that's right. Yeah, we had a vacancy at the  
9 time. Um-hum.

10 Q. And so, you know, you've testified about this. But that  
11 was about switching the water source from the DWSD to the KWA;  
12 is that correct?

13 A. Yes. The decision on the long-term supply.

14 Q. And what was the legal meaning of the city council's vote  
15 to join the KWA at the time?

16 A. It was an expression of position in a way that a city body  
17 takes a position on a, you know, state law or maybe even an  
18 international human rights issue.

19 So the city council was expressing its position on  
20 the matter.

21 Q. Okay. So it was basically symbolic?

22 A. That's not how I would say it. It's an expression of that  
23 body's position.

24 Q. And but at point, in fact, at that time, the emergency  
25 manager had the authority to make that decision; is that

1 correct?

2 A. Yes, that's correct. And there was not -- although there  
3 could have been, there was not an order that further empowered  
4 a city council. It was a resolution put before them on a  
5 properly called meeting, Public Open Meetings Act.

6 And the city council discussed it, I believe, over  
7 two meetings, as it turned out and then took a vote on the  
8 matter.

9 Q. And at that point in time, Mr. Kurtz was the emergency  
10 manager?

11 A. Yes.

12 Q. And for him to approve joining the KWA, did he need to  
13 seek any other approvals himself?

14 A. Yes. That was on a month's-long back-and-forth with the  
15 state Department of Treasury which practically ended up  
16 involving Governor Snyder himself.

17 Q. And so ultimately the decision was made to switch to the  
18 KWA?

19 A. Yes.

20 Q. And you testified about the contract being terminated,  
21 correct?

22 THE COURT: What contract?

23 MR. CHRISTIAN: Excuse me. I'll be more clear. I  
24 apologize.

25 BY MR. CHRISTIAN:

1 Q. The letter coming from the DWSD indicating that they would  
2 terminate the contract, you testified about that, correct?

3 A. Yes. That was -- the contract provided the cost structure  
4 of what the city was paying for water from DWSD.

5 Q. And in 2013, the expectation that the KWA would be able to  
6 operate, was it 2016?

7 Is that what you testified?

8 A. It was approximately -- you know, it was two to three  
9 years.

10 Q. But the termination date set by the DWSD was April of  
11 2014?

12 A. Yes. A year from whenever it was issued. Either party  
13 could terminate that contract with 12 month's notice.

14 Q. So there was a need for some sort of interim source  
15 between the end of the DWSD contract and the beginning of  
16 receiving water from the KWA, correct?

17 A. Yes. And that's what different levels of this decision,  
18 this is now the decision of continue with DWSD in some modified  
19 cost structure the way Genesee County did. Or the discussion  
20 that occurred kind of over time about using the Flint River in  
21 part or full.

22 Q. And you've testified a moment ago about the city council  
23 voting to join the KWA, correct?

24 A. Counsel, are you referring to the creation of the  
25 authority or using KWA as a long-term water supply?

1 Q. Thank you for asking.

2 Using the KWA as a long-term water supply?

3 A. Yes. That was the city council vote in March of 2013.

4 Q. Now, when there was the issue of the interim water source,  
5 the city council did not vote to use the Flint River as an  
6 interim water source between the DWSD and the KWA; is that  
7 correct?

8 A. Correct. The city council did not vote on that specific  
9 decision. It did not ultimately vote on the budget that was  
10 put in place for that coming fiscal year. There was a budget  
11 presentation to city council for informational purposes. I  
12 participated in that.

13 But it was the emergency manager's action that put  
14 that budget in place with the support of the Department of  
15 Treasury.

16 Q. And there came a time when Mr. Kurtz approved the use of  
17 the Flint River as the interim source?

18 A. That's what I understand. I don't have -- I don't have  
19 knowledge of what many of those conversations were.

20 It was in the budget proposal, and I came to  
21 understand later that there had been some discussions with  
22 staff and Michigan Department of Environmental Quality about  
23 actually proceeding with what was in that budget.

24 But that -- those were things I came to understand  
25 later.

1 Q. Okay. Thank you for clarifying that.

2 So put it this way. At that point in time, you  
3 didn't have authority to choose the KWA as a long-term water  
4 source; is that correct?

5 A. Correct.

6 Q. And the city council didn't have the authority to do that,  
7 to select the KWA as a long-term water source; is that correct?

8 A. That's correct.

9 Q. Or an interim water source for Flint?

10 THE COURT: Well, the KWA wasn't going to be ready  
11 until 2016, right?

12 Can you clarify -- did you mean the Flint River?

13 MR. CHRISTIAN: Well, at first I asked the question  
14 about the KWA as a long-term water source --

15 THE COURT: Okay.

16 MR. CHRISTIAN: -- and then I asked did the --

17 BY MR. CHRISTIAN:

18 Q. If the city council had voted, it would not have had  
19 authority to vote to use the Flint River as an interim source;  
20 is that correct?

21 A. Correct. It would not have had the authority of, you  
22 know, the legal action of the City of Flint municipal  
23 corporation.

24 Q. And you mentioned a moment ago that other communities in  
25 the region decided to use the DWSD as an interim water source



March 30, 2022

1839

1 before the KWA water became available?

2 A. That's correct. So in some fashion, the county drain  
3 commissioner's office made provision for water from DWSD to  
4 continue to come, which then, you know, was administered to  
5 various communities in Genesee County excluding Flint.

6 Q. So I'd like to redirect your attention to -- back to March  
7 of 2013.

8 Do you recall a city council meeting on March 25 of  
9 2013?

10 A. I believe that was the second of those two city council  
11 meetings I referenced.

12 Q. And at that city council meeting, you had the opportunity  
13 to speak; is that correct?

14 A. Yes.

15 Q. And you talked about using the Flint River as a permanent  
16 water supply and described that as extraordinarily risky,  
17 correct?

18 A. Yes.

19 Q. And at the same meeting, you described the DWSD water as  
20 one of the cleanest sources of fresh water on the planet; is  
21 that correct?

22 A. Yes. Drawn from -- drawn from, you know, what, a mile and  
23 a half or two off the shores of Lake Huron, yes.

24 Q. Now, going a little bit forward in time to April of 2014.  
25 You were at the -- and you testified about it yesterday --

March 30, 2022

1840

1 physically at the Flint Water Treatment Plant and were the one  
2 who -- you were the person who pushed the button to start the  
3 Flint River flowing into the homes, correct?

4 A. Yes.

5 Q. So I want to show you what has been marked as VNA trial  
6 Exhibit 539. It's Tab 59. And it was admitted -- it's already  
7 been admitted into evidence. And so --

8 THE COURT: What was the exhibit number when it was  
9 admitted?

10 MR. CHRISTIAN: The exhibit number -- let's see here.  
11 It was -- well, VNA Exhibit 539.

12 THE COURT: Okay. But you said it was previously  
13 exhibited --

14 MR. STERN: I don't believe this exhibit has been  
15 previously marked.

16 THE COURT: Yeah. Okay. I don't know that I've seen  
17 it. Okay. So this is going to be VNA 539.

18 MR. CHRISTIAN: Yes, Your Honor.

19 THE COURT: Is there --

20 MR. STERN: I object.

21 THE COURT: Okay.

22 MR. STERN: He's not a party to this email. We had  
23 an entire --

24 THE COURT: Let me just hear Mr. Erickson --

25 MR. CHRISTIAN: It was already been admitted, Your

March 30, 2022

1841

1 Honor. So it's already in evidence.

2 THE COURT: Okay. What is the exhibit number?

3 MR. CHRISTIAN: VNA 539.

4 THE COURT: I know. But we have a previously  
5 admitted VNA 539. What is the one that it was admitted under,  
6 and I'll look on my list to confirm.

7 MR. CHRISTIAN: Okay.

8 THE COURT: Which witness did we get this from?

9 MR. CHRISTIAN: We admitted it through Warren Green,  
10 Your Honor.

11 THE COURT: Oh, okay. And what number was it for  
12 Mr. Green? I've got that right here.

13 MR. CHRISTIAN: We're conferring that right now, Your  
14 Honor. I apologize for the delay.

15 THE COURT: That's okay. We're getting close to a  
16 break. So we'll just see if we can figure out that we've  
17 already got this exhibit.

18 MR. CHRISTIAN: Yes, Your Honor. It looks like it  
19 was Exhibit 539.

20 THE COURT: Oh, okay.

21 MR. CHRISTIAN: And I can tell you where it was on  
22 the transcript, Your Honor.

23 THE COURT: Just what day?

24 MR. CHRISTIAN: Admitted. It was admitted on  
25 March 10, Your Honor.

March 30, 2022

1842

1 THE COURT: Oh, I've gone back too far. Yeah. I've  
2 got it as received. Okay. So go ahead. And then we'll try  
3 to take a break around noon.

4 MR. CHRISTIAN: Okay.

5 BY MR. CHRISTIAN:

6 Q. So would you please -- you're taking a look at the --

7 A. The tab, please?

8 Q. The tab, yes. This is an email dated April 16 --

9 A. What number is it?

10 Q. Oh, I'm sorry. I apologize. Tab 59.

11 A. I can read it better in person.

12 Q. Yes. So that will give you a chance to look at it.

13 A. Yes.

14 Q. So just looking at the date, this email is dated April 16  
15 and 17th of 2014; is that correct?

16 A. Yes.

17 Q. And that's about a week roughly before you pressed the  
18 button to switch to the Flint River?

19 A. Yes. Those dates are correct.

20 Q. Let's go to the bottom of the email chain. So this is  
21 from Michael Glasgow, and just to refresh everyone's  
22 recollection.

23 Who is Michael Glasgow?

24 A. I do see this just above that. He's the laboratory and  
25 water quality supervisor for the Flint Water Plant.

1 Q. Were you aware that he was the F1 licensed operator of the  
2 plant?

3 A. I don't remember that specifically. I know there were  
4 discussions about F1s and the operations of the plant.

5 Q. And are you familiar -- were you familiar with  
6 Mr. Rosenthal, who's in to-line of this email, Adam Rosenthal?

7 A. I don't know that I was. I certainly would not have been  
8 at the time.

9 Q. And so if we look at to-line after his name in  
10 parentheses, what is that, DEQ?

11 A. Yes, DEQ.

12 Q. And when you see DEQ, what entity do you associate that  
13 with?

14 A. This is a state department. The State Department of  
15 Environmental Quality.

16 Q. So what I'm going to do here is ask you to read here this  
17 paragraph of what Mr. Glasgow wrote.

18 MR. STERN: Which paragraph?

19 BY MR. CHRISTIAN:

20 Q. The bottom paragraph in the first email. Begins with,  
21 "good afternoon." If you go to the bottom of the email  
22 thread --

23 A. Oh, the bottom. I see.

24 Q. On page 2.

25 A. I'm sorry. I was still on page 1. I couldn't find that

March 30, 2022

1844

1 paragraph.

2 Q. Sorry. About that.

3 THE COURT: Flip the page, and it's there.

4 THE WITNESS: Yes. Yes. "Adam. Good afternoon."

5 Would you like me to read this?

6 BY MR. CHRISTIAN:

7 Q. Yes, please.

8 A. It doesn't matter -- I'm not on this. I just want --  
9 okay.

10 Q. I know. This is called publishing it to the jury. It's  
11 already in evidence.

12 THE COURT: Do you want him to read it out loud?

13 MR. CHRISTIAN: Yes, please.

14 BY MR. CHRISTIAN:

15 Q. Please read it out loud.

16 A. "Adam, good afternoon. I'm contacting you in regards to  
17 possible changes in our monitoring of our change to full-time  
18 operation out of the Flint River.

19 "I am expecting changes to our water quality  
20 monitoring parameters and possibly our DBP and lead and copper  
21 monitoring plan. Also, I am wondering about our MOR-required  
22 testing.

23 "I know you have probably been in contact with Howard  
24 Croft; however, I have not seen anything except the notes you  
25 or Prysby made on the last page of our 2014 monitoring

March 30, 2022

1845

1 schedule, quote, that things were subject to change, unquote.

2 "Any information would be greatly appreciated because  
3 it looks as if we will be starting the plant up tomorrow and  
4 are being pushed to start distributing water as soon as  
5 possible.

6 "As the acting F-1, I would like to make sure we are  
7 monitoring, reporting, and meeting our requirements before I  
8 give the okay to start distributing water. Thanks, Mike  
9 Glasgow."

10 Q. Okay. So just a couple of terms in there I want to see if  
11 you know the meaning of.

12 MOR, are you familiar with that? Monthly operating  
13 report?

14 MR. STERN: Objection. He's familiar with it now. I  
15 mean --

16 THE WITNESS: I don't think I was.

17 THE COURT: Well, we'll just find out if he was --  
18 did you know what that was before Mr. Christian mentioned it?

19 THE WITNESS: I don't think so. I mean, now that he  
20 said it, I remember later that there were some monthly reports  
21 that we were, I think, even publishing at a later point.

22 THE COURT: Good.

23 BY MR. CHRISTIAN:

24 Q. The name Prysby, is that familiar to you?

25 A. That is. Again, you know, not at the time. I wasn't in

March 30, 2022

1846

1 these discussions. But Mike Prysby was one of the individuals  
2 who then was coming to Flint, like, in 2015 and was  
3 participating in public meetings or advisory meetings.

4 So I do know now, you know, and as of about 2015,  
5 Prysby.

6 Q. So in this text, Mr. Glasgow mentioned being pushed to  
7 start distributing water as soon as possible.

8 Based on your experience, who was pushing him?

9 MR. STERN: Objection. It assumes facts not in  
10 evidence.

11 THE COURT: If he knows. He's told us he wasn't --

12 THE WITNESS: I don't know.

13 THE COURT: Yeah.

14 BY MR. CHRISTIAN:

15 Q. Okay. So let's move to -- move up in the chain --

16 THE COURT: You know what, I've just remembered we're  
17 supposed to be taking a break. So why don't we do that.  
18 We'll take about a 15-minute break.

19 And so please rise for the jury.

20 (Jury Out)

21 THE COURT: Mr. Walling, feel free to take a break,  
22 and we'll be back in 15 minutes.

23 THE WITNESS: Thank you, Your Honor.

24 (Brief Recess)

25 THE COURT: Please be seated, and we'll get the jury



1 back in.

2 It is turning sunny out, and it is 39 degrees. We're  
3 headed in the right direction. So this is good.

4 UNIDENTIFIED PERSON: Rain tomorrow.

5 THE COURT: I know. I think it's going to rain  
6 forever after today.

7 THE CASE MANAGER: All rise for the jury.

8 (Jury In)

9 THE COURT: Okay. Please be seated. Welcome back.  
10 And, Mr. Christian, you may proceed.

11 MR. CHRISTIAN: Thank you, Your Honor.

12 BY MR. CHRISTIAN:

13 Q. Mr. Walling, before we had the break, I asked you about if  
14 you knew who was pushing Mr. Glasgow to distribute the water  
15 from the Flint River.

16 And you said you didn't know, correct?

17 A. Correct.

18 Q. And so I'd like to direct your attention to that same  
19 email at the bottom on the backside on page 2. In the  
20 second-to-last line, it says, "as the acting Fl."

21 That term, "Fl," what, if any, meaning did it have to  
22 you?

23 A. It's a license. It has to do with the -- like, an ability  
24 to run a Water Treatment Plant.

25 Q. So based on this email, it appears that Mr. Glasgow is

1 representing himself to have that license; is that fair to say?

2 A. That is what it says.

3 Q. So I'd like to turn back to the first page. And if you  
4 take a look at Mr. Rosenthal's response on Wednesday, April 16,  
5 2014, at 2:49 P.M., and I'll summarize.

6 He writes that the MDEQ has been working on a revised  
7 monitoring schedule and that it was being sent out on the same  
8 day; is that correct?

9 A. Revised schedule, yes.

10 Q. And then Mr. Glasgow responds later that day -- or excuse  
11 me -- on the next day, April 17, at 11:05 A.M.

12 And would you please read for the jury Mr. Glasgow's  
13 response?

14 A. Yes.

15 "From Mike Glasgow. Adam, thank you for the quick  
16 response. I assumed there would be dramatic changes to our  
17 monitoring. I have people above me making plans to distribute  
18 water ASAP.

19 "I was reluctant before, but after looking at the  
20 monitoring schedule and our current staffing, I do not  
21 anticipate giving the okay to begin sending water out any time  
22 soon.

23 "If water is distributed from this plant in the next  
24 couple of weeks, it will be against my direction. I need time  
25 to adequately train additional staff and to update our

March 30, 2022

1849

1 monitoring plans before I will feel we are ready.

2 "I will reiterate this to management above me, but  
3 they seem to have their own agenda. Thank you, Mike Glasgow."

4 Q. Thank you for reading that.

5 So first I'd like to look at that email. It's from  
6 Michael Glasgow.

7 Who's in the to-line?

8 A. Adam Rosenthal DEQ.

9 Q. And what about the copy, the CC line?

10 A. Mike Prysby, DEQ. Stephen Busch, DEQ.

11 Q. Okay. So Mr. Glasgow talks about time he needs to train  
12 staff before he gives the okay to turn on the Flint Water  
13 Treatment Plant.

14 That's part of what he wrote, correct?

15 A. I see that.

16 Q. Did Mr. Croft or anyone else tell you, ever tell you that  
17 Mr. Glasgow needed more time to train staff before turning on  
18 the Flint Water Treatment Plant?

19 A. No.

20 Q. And at that point in time, how often were you meeting with  
21 Mr. Croft?

22 A. I wasn't meeting with Mr. Croft individually at this time.  
23 I would see Mr. Croft in those weekly staff meetings. We've  
24 seen some of the notes from those at different times.

25 And then I believe at this time, Mr. Croft's office,

March 30, 2022

1850

1 I think he was also primarily working out of an office in the  
2 mayor's office suite. So it was like a horseshoe of different  
3 offices.

4 So I might, you know, speak with Howard for a few  
5 minutes at some point during a day. You know, ask him, "How's  
6 it going?"

7 And he would say -- if it had to do with water around  
8 that time, I would hear something like, "We're working on it.  
9 There's things we still have to do."

10 Q. So --

11 A. Very general kinds of statements. He was not -- he was  
12 not reporting to me. I was not in that chain of command.

13 Q. And at the time of that email -- so you saw him at least  
14 weekly in a regularly scheduled meeting; is that correct?

15 A. Yeah. Approximately. You know, different staff might not  
16 be there every week. But I would be there almost all those  
17 weekly staff meetings.

18 Q. And then you had chance meetings with him around the  
19 office?

20 A. Yes.

21 Q. Watercooler talk sometimes with him?

22 A. Yeah. We didn't have a watercooler, but yes.

23 Q. And so did anyone tell you that Mr. Glasgow needed more  
24 time?

25 A. No.

March 30, 2022

1851

1 Q. And then just one week later, you actually pressed that  
2 button, correct?

3 A. Yes.

4 Q. Mr. Glasgow refers to management above him having their  
5 own agenda.

6 Who is the management above Mr. Glasgow at that time?

7 A. So just the structure, there was Brent Wright, the water  
8 plant supervisor. We've seen that individual. I believe Duffy  
9 Johnson was utilities director at that time.

10 And then the next step up would be Mr. Croft as  
11 public works. And then -- April 2014. And then the emergency  
12 manager.

13 Q. So there were four people above Mr. Glasgow at the time?

14 A. Yeah. That's what I would describe just from the  
15 organization chart. Not knowing who was actually talking to  
16 who. But that's what the organization chart would reflect.

17 Q. Mr. Glasgow refers to an agenda.

18 What agenda was he referring to?

19 THE COURT: Well, if you know.

20 THE WITNESS: Yeah. I don't know, Your Honor.

21 BY MR. CHRISTIAN:

22 Q. Okay. So just to be clear, going into the changeover, no  
23 one told you anything about this email from Mr. Glasgow or his  
24 concerns?

25 A. Correct.

1 Q. So I'd like to turn to Tab 4 of VNA Exhibit 2770. And  
2 Mr. Walling, we have a video of the button pressing switchover.

3 MR. CHRISTIAN: So we'd like to first move to admit  
4 the video clip. It's about 30 seconds long.

5 MR. STERN: No objection.

6 THE COURT: Okay. Just a minute. I need to write  
7 this down.

8 MR. CHRISTIAN: And it's VNA, if I didn't say it, VNA  
9 Exhibit 2770.

10 THE COURT: Mr. Erickson.

11 MR. ERICKSON: No objection.

12 THE COURT: Okay. Then that's received.

13 (VNA Exhibit No. 2770 Admitted Into Evidence.)

14 (Recording Played)

15 BY MR. CHRISTIAN:

16 Q. So you were deposed in this case. I think you maybe  
17 testified about that already.

18 A. Yes.

19 Q. And you testified about what changed your mind between  
20 when you thought the Flint River was risky and the day when you  
21 pressed the button that we just saw?

22 A. Yes.

23 Q. You said you relied upon other people's assurances; is  
24 that correct?

25 A. Yes.

March 30, 2022

1853

1 Q. Whose assurances did you rely upon?

2 A. Mr. Howard Croft as director of public works. The  
3 emergency manager. And I understood that they were  
4 communicating with Michigan Department of Environmental  
5 Quality.

6 And that the City of Flint would, you know, plant,  
7 would not be able to distribute water until it had met the  
8 MDEQ's requirements under the Safe Drinking Water Act.

9 Q. So it was your understanding at that time -- or your  
10 belief that the MDEQ had to provide some sort of approval for  
11 the Flint Water Treatment Plant to operate?

12 A. Yes. Mr. Croft would tell me things about, you know,  
13 "We're working with the Michigan Department of Environmental  
14 Quality on," you know, something or other.

15 Q. When Mr. Croft told you that, was that in these weekly  
16 meetings you referred to?

17 A. It was either in the meetings or in those conversations.  
18 Right about that time, I was -- no. That was a different  
19 point. So it was in either those meetings or the individual  
20 conversations.

21 Q. And at that point in time, what, if any, documentation to  
22 backup his representations did Mr. Croft offer you?

23 A. I don't recall that I had documentation.

24 Q. And what, if any, documentation did you request from  
25 Mr. Croft at that point in time?

1 A. I don't recall that I did request any documentation.

2 Q. And Mr. Croft made reference to the MDEQ providing him  
3 assurances, correct?

4 A. That he was in communication with the MDEQ.

5 Q. And at that point in time, did you make any inquiries of  
6 MDEQ directly yourself?

7 A. No.

8 Q. And at that point in time, did you inquire with Mr. Earley  
9 about the approvals to operate the Flint Water Treatment Plant?

10 A. We were in communication. Same kind of thing as with  
11 Mr. Croft of knowing that things were being worked on, that  
12 there was, you know, a timeline in place. That's what I  
13 understood.

14 Q. So I've asked you about, you know, what inquiries you might  
15 have made. Are there some inquiries of others, of other bodies  
16 that you've made that I haven't asked you about so far?

17 A. Not that I've recalled.

18 Q. And so I'm just curious.

19 There were many people in the room. Many smiling  
20 faces, correct, when you pressed the button?

21 A. Oh, in the room. Yeah, that's a small -- that's an  
22 outpost of the big building. So we haven't seen a picture of  
23 that. But there's a spot where the valve underneath where the  
24 Detroit system connects to the city's distribution system.

25 So there were some number of people there. It wasn't



1 -- the front of the video you showed was in the Water Treatment  
2 Plant building that we saw in a picture.

3 The button was in a smaller kind of one-room building  
4 around back of that complex.

5 Q. Now, there were several individuals in the room when you  
6 pressed the button, correct, or in that area?

7 A. Yes.

8 Q. How is it decided that you would press the button?

9 A. It was suggested as a ceremonial function. I believe  
10 Mr. Earley maybe first suggested it. And I -- that's the kind  
11 of thing a mayor does.

12 I mean, I certainly look back on that day with an  
13 enormous amount of regret, given what has transpired. But a  
14 mayor performs ceremonial functions. You cut ribbons, you  
15 break ground.

16 You know, in my case, push a button at a water plant  
17 and drink a glass of water that has been treated at that plant.

18 Q. And so you had an understanding at that point in time that  
19 MDEQ had made certain assurances as you've testified recently,  
20 correct?

21 A. Yes, yes.

22 Q. And at that point in time, you had a fair amount of  
23 experience working in government, correct?

24 A. Yes. I had been in office myself. I had worked  
25 previously for the mayor of Washington, D.C., after graduate

1 school.

2 Q. And based on that experience and understanding of the  
3 Michigan government, you understood that the MDEQ was  
4 ultimately in charge of all drinking water systems in the  
5 state; is that correct?

6 A. Yes. The state has the primary responsibility under the  
7 federal law to ensure safe drinking water.

8 Q. So at that point in time, public works obviously was in  
9 charge of the water treatment plant, correct?

10 A. Yes. It was part of that organizational structure, yes.

11 Q. And that also included the distribution system; is that  
12 correct? The Department of Public Works's responsibility.

13 A. Yeah. The pipes within the city?

14 Q. Yes.

15 A. Yes.

16 Q. So in your understanding of Mr. Croft's job  
17 responsibilities, you understood he had a responsibility to  
18 protect the safety and health of the citizens of Flint; is that  
19 fair to say?

20 A. Yes. That's a basic responsibility. Health and welfare.

21 Q. And based on your testimony, is it fair to say that  
22 Mr. Croft had more day-to-day interactions with the staff at  
23 the water plant than you?

24 A. I don't really know. But I can't -- it couldn't be less  
25 than me, because I wasn't having any. But I don't -- I don't

March 30, 2022

1857

1 know.

2 Q. And then just to be clear, you believe the water to be  
3 safe when you pressed that button for people to drink?

4 A. Yes.

5 Q. Now, at that point in time, and it may seem obvious, VNA  
6 didn't have any role or responsibility, correct?

7 A. Correct.

8 Q. And just to be -- just to make it clear, their contract  
9 wasn't signed, I think you testified until February 10 of 2015,  
10 correct?

11 A. Yes, that sounds about right.

12 Q. So if I asked you the question: Did anyone at VNA tell  
13 you that it wasn't safe to press the button and switch to the  
14 Flint River, that question wouldn't make sense to you, would  
15 it?

16 A. Right. I certainly would not have been expecting anything  
17 from someone with VNA.

18 Q. So let's -- I'd like to direct your attention now to the  
19 period after the switchover. You've talked about your office  
20 hours. If I remember correctly, Wednesday from 10:00 to 12:00.

21 A. 10:00 to noon, yes.

22 Q. And it seems like it's something that you looked forward  
23 to in your role as mayor?

24 A. Yes. Most days.

25 Q. And you did that fairly religiously every week?

1 A. I did. I think I was sick maybe once or twice. And the  
2 only other thing I would reschedule for is I think there were  
3 -- there were a few occasions where I was asked to be at the  
4 White House for a certain purpose.

5 Anyone else who called, I was not available between  
6 10:00 and noon. So if you wanted me somewhere or you wanted me  
7 at a meeting, you had to pick a different time.

8 Q. So roughly four weeks per month?

9 A. Yes.

10 Q. So about eight hours per month meeting with citizens?

11 A. You're doing the math on that one.

12 Q. I'm trying. And over ten months, that would be about 80  
13 hours of time meeting with the citizens of Flint?

14 A. Um-hum.

15 Q. Whatever issues they brought to you?

16 A. Um-hum.

17 Q. Did they have to make a reservation to come see you?

18 A. No. If you wanted a reservation, which you could do, you  
19 know, usually the executive assistant could find time for, you  
20 know, a 15 or 30-minute meeting usually within about a month or  
21 about four to six weeks.

22 But this was a -- this was a first come, first served  
23 walk-in environment. It was open.

24 There was a sign-in sheet, because it's also not fair  
25 to ask somebody to, you know, show up at 9:30 and then just

March 30, 2022

1859

1 sit there for two and a half hours.

2 So someone could come to the complex, sign in.

3 They'd say, "Okay. I'm number three. You know, Mayor will  
4 probably get to me about 10:30."

5 And as long as they were there when it came their  
6 turn, then they came back, and we sat across my desk and got  
7 to know each other a bit. And I heard what was on their mind.

8 Q. And when they came to you, some of the citizens brought  
9 complaints with them, right? To you?

10 A. Oh, yes.

11 Q. And those included complaints about the water; is that  
12 fair to say?

13 A. Yes.

14 Q. And Mr. Stern asked you about some of those complaints  
15 yesterday. I'd like to get into some of those now.

16 So first of all, after the switchover to the Flint  
17 River, when did the complaints start?

18 A. It seemed like almost immediately. Certainly, you know,  
19 in May, those complaints were coming forward. These are the  
20 things you learn a bit about later.

21 But it takes a certain amount of time for a water  
22 that was treated by the plant to circulate through however many  
23 hundreds of miles of pipes we have in the city. So it seemed  
24 like immediate.

25 Q. And did there come a time where you ever stopped having

March 30, 2022

1860

1 those meetings during your second term as mayor?

2 A. No. That was something thankfully that I was able to  
3 continue. I mean, if the emergency manager wouldn't have  
4 supported it, there might have been an alternative means that I  
5 could have used.

6 But I was using my physical office of the mayor, and  
7 when a previous emergency administration had taken place, the  
8 mayor had actually been removed from that space.

9 So I was in the office the whole time, was able to  
10 meet with citizens in that same fashion, even as the emergency  
11 managers came and went.

12 Q. And did there come a time when the citizens ever stopped  
13 complaining about the water?

14 A. No. There were ups and downs over different times and  
15 seasons. But, no, I would have probably had, you know, at  
16 least someone every -- you know, if not every week, every  
17 couple of weeks who had some particular issue with water.

18 Something about, you know, a test they hadn't heard  
19 back from or a concern they wanted to share.

20 Q. And just to point out one other thing. So 2015 was an  
21 election year; is that correct?

22 A. Yes.

23 Q. And I believe you said that when you first ran for mayor,  
24 you knocked on thousands of doors?

25 A. Yes.

1 Q. And during 2015, did you go door to door and then also  
2 campaign?

3 A. Yes, sir.

4 Q. And did some of those people also share their complaints  
5 with you when you went door to door?

6 A. Yes. Some did. One of the challenges at that time in  
7 really trying to understand what was occurring -- and you know,  
8 again, we know a lot about these things, a lot more about them  
9 now.

10 But different even households, you know, right next  
11 to each other could actually have had a very different  
12 experience with what was coming out of the tap.

13 But, yes, there were through the summer and then in,  
14 you know, September and October, it was on everybody's mind,  
15 you know, when I knocked on a door.

16 Q. And so you just testified that you could have two houses  
17 next door to each other that would have different experiences  
18 with respect to the water?

19 A. Yes. As far as someone just turning on a tap. They might  
20 not know exactly what's actually happening in terms of the  
21 chemistry, but one tap could look one way another tap a  
22 different way.

23 Q. And because you were talking to a lot of people back then,  
24 you knew that at a time back in 2014 and 2015; is that correct?

25 A. I knew there were a wide variety of experiences, yes.

March 30, 2022

1862

1 Q. Okay. So let's take a look at Tab number 5, which has  
2 been marked as VNA Exhibit 2756A.

3 Does that exhibit -- if you've had a chance to turn  
4 to it, does it look familiar to you?

5 Tab 5.

6 A. Yeah. These are my handwritten notes.

7 Q. And it's front and back.

8 A. It is.

9 Q. And the page is undated; is that fair to say?

10 A. That's what I was going to say. And this -- yeah. I  
11 mean, these are my notes. These are reflective of citizen  
12 frustrations. It would have either been -- these are multiple  
13 people making these comments.

14 It was either at a community advisory meeting at some  
15 point or possibly a city council meeting.

16 Q. So first of all, so this is your handwriting.

17 I believe you said you recognize it?

18 A. Yes.

19 Q. And?

20 MR. CHRISTIAN: And so, Your Honor, we move to admit  
21 VNA Exhibit 2756A into evidence.

22 MR. STERN: No objection.

23 MR. ERICKSON: No objection.

24 THE COURT: Just one second while I get another part  
25 of my high tech system out. 2756A is received.



1 (VNA Exhibit No. 2756A Admitted Into Evidence.)

2 BY MR. CHRISTIAN:

3 Q. So, Mr. Walling, these -- what you're recording here as  
4 best you can recall, these aren't your own thoughts. These are  
5 comments you received from your constituents, correct?

6 A. Right. What I do in my notes is if I'm adding my -- I  
7 don't think we've seen this. But if I'm adding my own thought,  
8 I put it in brackets.

9 So if I'm -- if you say something that I want to take  
10 note of, I'll try to capture that and then I'll put in brackets  
11 my own thought. So that helps me make that distinction for  
12 exactly this reason.

13 When I look back at this, these are things I'm  
14 hearing from, you know, Flint residents that I'm making note  
15 of.

16 Q. And just to be clear, these notes, as far as you  
17 understand, are from one event. This isn't from a log or  
18 anything like that.

19 This is from one event?

20 A. This is one-event note.

21 Q. Okay. So let's talk about a few of these comments. So  
22 the bottom left-hand corner of the page, I see a comment that  
23 says, "I pay highest price and can't use the water."

24 Did I read that correctly?

25 A. Yes.

March 30, 2022

1864

1 Q. And in the second column, the second comment from the top.

2 "Is the risk to the consumer worth saving a penny?"

3 Excuse me. I'm sorry. I misread that.

4 "Is the risk to consumer's life worth saving a  
5 penny?"

6 Did I read that correctly?

7 A. Yes.

8 Q. Second column, bottom comment.

9 "I'm losing my hair. I can't take it."

10 Did I read that correctly?

11 A. Yes.

12 Q. Next, let's turn to the second page, which we referred to  
13 earlier. Is it -- let's see here. So look at this page,  
14 second column, three lines down.

15 "Like drinking out of a toilet."

16 Did I read that correctly?

17 A. Yes.

18 Q. And a little further down on the page.

19 "Smells like a wet dog."

20 Did I read that correctly?

21 A. Yes.

22 Q. And a little further down.

23 "Cat won't drink the Flint water. Cat smells it and  
24 won't drink it."

25 Did I read that correctly?

1 A. Yes.

2 Q. These complaints about the smell, price, etcetera, were  
3 the types of complaints that you started receiving shortly  
4 after the switch to the Flint River; is that correct?

5 A. Yes. And, again, I don't remember the dates of this --  
6 these particular notes. But those were the same kinds of  
7 things that people were complaining about, yes.

8 MR. CHRISTIAN: Okay. So what we're going to do, and  
9 I make this just to notify the Court as well as the counsel.  
10 We're going to compile a demonstrative based upon the  
11 testimony of the witness.

12 We have a -- I believe it's Tab -- let's see here --  
13 55 is the completed tab. But we're only going to add -- we're  
14 going to add one piece at a time.

15 So if Bobby would put up --

16 THE COURT: Just a minute. So this will be a  
17 timeline?

18 MR. CHRISTIAN: Yes. Of different items that the  
19 witness testifies about. But we won't put it up until --

20 THE COURT: And have you shown it to the other  
21 lawyers in the case?

22 MR. CHRISTIAN: It's in the binders. Tab 55.

23 MR. STERN: And I'm seeing it for the first time.  
24 But I have no issue with timelines.

25 THE COURT: Okay. Mr. Erickson, any concern?

March 30, 2022

1866

1 MR. ERICKSON: One moment, Your Honor.

2 THE COURT: And when we say -- I think we talked  
3 about this. But it's been a while. A demonstrative exhibit  
4 is not evidence that can prove a fact in the case. But it's  
5 used to -- when there's a lot of evidence, it's used to sort  
6 of demonstrate where we are. What do we have so far.

7 So it's not something you can take back into the jury  
8 room during your deliberations, but it's a guide to what the  
9 evidence has shown so far.

10 MR. ERICKSON: No objection.

11 THE COURT: Okay. So go ahead.

12 MR. CHRISTIAN: Starting with a blank slate.

13 BY MR. CHRISTIAN:

14 Q. So I'd like you to look back to the first page of this  
15 exhibit, if you would.

16 MR. CHRISTIAN: And if we could actually put that up.  
17 So what I'm going to say is on the first column, the  
18 second-to-last note -- okay.

19 THE COURT: So what he's looking at is different from  
20 what's -- oh, I see.

21 MR. CHRISTIAN: So it's on the first page.

22 THE COURT: Give us the number of this.

23 MR. CHRISTIAN: This was just admitted as VNA trial  
24 Exhibit 2756A.

25 THE COURT: Okay.

March 30, 2022

1867

1 BY MR. CHRISTIAN:

2 Q. And I'd like to you direct you to the second-to-last  
3 comment in the first column.

4 Would you please read that for the members of the  
5 jury, please?

6 A. "Governor put Earley here and Kurtz and Brown."

7 Q. Do you know Mr. Ambrose's name there?

8 A. No.

9 Q. And Mr. Ambrose became emergency manager in January of  
10 2015?

11 A. Yes.

12 Q. So this document, these notes are from before February of  
13 2015 --

14 THE COURT: I don't think we can go that far. This  
15 -- these are handwritten notes at a community meeting. I  
16 don't think that gives us the date.

17 But let's see if the witness knows the date of these  
18 meeting minutes or your handwritten notes of the meeting.

19 THE WITNESS: Yeah. And I don't -- I don't know the  
20 date. I agree, Your Honor, that just because a citizen  
21 doesn't include something. What I did see, though, in the top  
22 of the left column --

23 THE COURT: Okay.

24 THE WITNESS: -- the first from the second item is,  
25 "We wouldn't know anything if the DEQ didn't order it."

1 I'm pretty sure that that was referring to the DEQ's  
2 order to issue the notice of TTHM violation under the Safe  
3 Drinking Water Act.

4 THE COURT: There you go.

5 THE WITNESS: So I believe -- I believe these notes  
6 were sometime January 2015 or later.

7 THE COURT: That's a good way to date these.

8 THE WITNESS: I don't know where you put it on your  
9 timeline.

10 MR. CHRISTIAN: So --

11 THE WITNESS: But it's after the DEQ notice. When  
12 that DEQ -- when that notice went out, you know, the concern  
13 in the community just hit what I thought was a ceiling and  
14 then we found out there's more ceilings above that.

15 BY MR. CHRISTIAN:

16 Q. Sure. So you mentioned that the -- something about the  
17 resident, what the resident put.

18 These notes about -- these notes are in your  
19 handwriting, correct?

20 A. Yes.

21 Q. So this is what you wrote when you were talking to the  
22 residents, correct?

23 A. I was listening to residents. This was a group. This was  
24 a meeting of some kind. And I tend to have better notes in  
25 meetings where I'm not a primary person. If I'm doing a lot

1 of, kind of, talking or explaining, I tend to not have a lot of  
2 notes.

3 I was taking notes, and it may have even been with  
4 Mr. Ambrose. And the person might have even been -- I'm  
5 speculating -- but they might have been expressing themselves  
6 to Mr. Ambrose and saying these other names of people who had  
7 come before.

8 I was taking notes throughout this meeting.

9 Q. Sure. So just to be clear, you mentioned the MDEQ TTHM  
10 notice, right?

11 A. Yes.

12 Q. As that's kind of a framing point for time?

13 A. Yes.

14 Q. That notice went out in October of 2014; is that correct?

15 A. The first meeting I was at where I became aware of it was  
16 at that time.

17 Q. And when did the --

18 A. The notice went out, I think the city put it in the mail  
19 right before the new year, and the post office said residents  
20 are going to be getting it in the first few days of January of  
21 2015.

22 Q. Okay. So is it fair to say that by May of 2014, you  
23 started receiving citizens' complaints about the changeover?

24 A. Yes.

25 Q. Okay. So we're going to add that to our timeline.

March 30, 2022

1870

1 And is it fair to say you didn't get these type of  
2 complaints when Flint was using the DWSD water?

3 A. There were a lot -- new complaints about the water. So I  
4 would have continued to receive complaints about water costs.  
5 People would, you know, be just concerned about the cost in  
6 general. Like, "I don't like my bill being \$180 a year."

7 Or someone would come in with a very specific bill  
8 like, "Mayor, you know, what can you do to help me? My bill is  
9 now \$1,600, because I haven't been able to pay it."

10 So those complaints would have been throughout my  
11 entire time in office. So the cost comments were throughout.

12 But the new complaints were about the discoloration,  
13 the smell. That's what was coming out in May of 2014.

14 Q. Starting in May of 2014?

15 A. Yeah. Starting. Those were the new kinds of complaints  
16 after the switch.

17 Q. And despite these complaints, in 2014, there was not a  
18 switch back to DWSD; is that correct?

19 A. Collect.

20 Q. So I'd like to direct your attention to the -- August of  
21 2014. Yeah. 2014.

22 A. Yes.

23 Q. On August 15 of 2014, Flint issued a boil water advisory;  
24 is that correct?

25 A. Yes.



March 30, 2022

1871

1 Q. I'd like you to turn to Tab 6 in your notebook. You'll  
2 see what has been marked for identification as VNA trial  
3 Exhibit 618.

4 You've seen this document before; is that correct?

5 A. Yes.

6 MR. CHRISTIAN: Your Honor, I move to admit VNA 618  
7 into evidence.

8 MR. STERN: No objection.

9 MR. ERICKSON: No objection.

10 THE COURT: Okay. It's received.

11 (VNA Exhibit No. 618 Admitted Into Evidence.)

12 BY MR. CHRISTIAN:

13 Q. So this is a boil water advisory that Flint issued on  
14 August 15 of 2015; is that correct?

15 A. Yes.

16 Q. And it's signed at the bottom by whom?

17 A. That is Brent Wright, plant supervisor.

18 Q. And let's take a look at what it says. And let's go here.  
19 So the heading says, "Localized Drinking Water Warning."

20 And it says below that, "A localized area of the City  
21 of Flint water is contaminated with fecal coliform."

22 What -- you were here -- you were in Flint at the  
23 time, correct?

24 A. Yes.

25 Q. What, to your knowledge, is fecal coliform bacteria?

1 A. It's a bacteria that can appear in a water system. It's  
2 something that's routinely tested for at multiple sites  
3 throughout the city.

4 Q. Any -- what is the source of this type of bacteria?

5 A. I think it has to do with something that may have been in  
6 the water, but then due to lack of chlorination, has, like,  
7 grown in the water as it's moved through these systems to a  
8 point where it can be, you know, can be tested, can be picked  
9 up by a test.

10 Q. Thank you.

11 So let's go a little further down from where we first  
12 read. And it starts -- quotes that starts with, "Fecal  
13 coliforms and E. Coli are bacteria whose presence indicates  
14 that water may be contaminated with human or animal wastes"; is  
15 that correct?

16 A. Yes.

17 Q. Did I read that correctly?

18 A. Yes.

19 Q. Then it says, "Microbes in these wastes can cause  
20 diarrhea, cramps, nausea, headaches, or other symptoms."

21 Did I read that correctly?

22 A. Yes.

23 Q. And then it says that, "These microbes may pose a special  
24 risk for infants, young children, some of the elderly, and  
25 people with severely compromised immune systems."

March 30, 2022

1873

1 Did I read that correctly?

2 A. Yes.

3 Q. Now, to be sure, this wasn't a boil water advisory for the  
4 whole city, right?

5 A. It was not. These notices would be accompanied by a map  
6 that would show the affected area that would be the kind of  
7 thing that would show up on an evening news, City of Flint's  
8 issue to boil water advisory. It would show the area.

9 That's what the "localized" means, I believe.

10 Q. And how did the City of Flint -- I mean, you say the  
11 evening news.

12 How did the City of Flint disseminate this  
13 information?

14 A. This would go out through required media channels. I see  
15 that Brent Wright is attesting that it complies with public  
16 notice requirements.

17 I don't think -- at least when these are initially  
18 issued, there's not an individual, like, kind of household  
19 mailing that was occurring.

20 The area would be, as it says, there would be  
21 chlorine, there would be flushing. Once they get clear tests  
22 for either, you know, some period of time, they have to do  
23 multiple tests. They have to be clear.

24 And then the boil water advisory is lifted. I  
25 believe this advisory was in place for, you know, a few days.

March 30, 2022

1874

1 MR. CHRISTIAN: So we're going to add to our timeline  
2 the August 15, 2014, boil water advisory.

3 BY MR. CHRISTIAN:

4 Q. So I'd like to turn your attention now to Tab 7, which is  
5 marked for identification as VNA trial Exhibit 627.

6 Do you recognize this, Mr. Walling?

7 A. Yes.

8 MR. CHRISTIAN: And, Your Honor, we move to admit VNA  
9 Exhibit 627 into evidence.

10 MR. STERN: No objection.

11 MR. ERICKSON: No objection.

12 THE COURT: Okay. It's received.

13 (VNA Exhibit No. 627 Admitted Into Evidence.)

14 BY MR. CHRISTIAN:

15 Q. So what is this, Mr. Walling?

16 A. It's very similar notice. I did also note that even  
17 though I said a map, that earlier exhibit we looked at did give  
18 streets. Cause that's in bold on this advisory, so that caught  
19 my attention. It provided the area, the streets that were  
20 affected.

21 Q. So this is another boil water advisory, Exhibit 627?

22 A. Yes.

23 Q. And what is the date of that boil water advisory?

24 A. This one is September 6, 2014.

25 Q. So the next month avenue the previous one we saw?

1 A. Yes.

2 Q. And so like the first boil water advisory, and you just  
3 said it's limited to a particular area.

4 I imagine if you look at this, you can tell us kind  
5 of the general area it is?

6 A. Yeah. The first notice was more west. This second notice  
7 is more north.

8 Q. Now, the cause of this --

9 A. It does involve some of the west area. I think a larger  
10 in this second one. Flushing and Chevrolet. And then updated  
11 to be ML King and Pasadena.

12 The testing would be occurring at these multiple  
13 sites. So if there was a problem in one area, there would be  
14 additional testing in those surrounding sites to determine.

15 So it looks like in this second case, there may have  
16 been an initial finding and then a second, which is why it had  
17 to be updated.

18 Q. So this second boil water advisory is for total coliform  
19 bacteria, right?

20 A. Yes, that is what it said. Yes.

21 Q. And if you look towards the bottom of the document, the  
22 document says, "Usually coliforms are a sign that there could  
23 be a problem with the treatment or distribution system  
24 (pipes)."

25 Did I read that correctly?

March 30, 2022

1876

1 A. Yes.

2 Q. And at the time of these boil water advisories, the  
3 emergency manager of Flint was Darnell Earley; is that correct?

4 A. Yes.

5 Q. And based on working with Mr. Earley, this is something  
6 that he would be aware of, correct?

7 A. Yes. These occurred in a number of times when I was in  
8 office. I believe every time mayor, emergency manager would  
9 know about this when -- when that was identified, yes.

10 Q. And upon -- and after learning about these boil water  
11 advisories, Mr. Earley did not try to switch -- or try to  
12 switch back to DWSD, did he?

13 A. Not to my knowledge.

14 Q. Did you ever hear him say he wanted to switch back to DWSD  
15 after this?

16 A. I did not.

17 Q. And just to be clear, at this point in time, VNA was not  
18 working in Flint; is that correct?

19 A. Correct.

20 Q. Now, you mentioned TTHMs before you testified about it  
21 yesterday. I believe you mentioned MDA -- MDEQ issuing  
22 something about TTHMs, issuing an alert?

23 A. Yeah --

24 THE COURT: Just a minute. Let him answer the  
25 question.

March 30, 2022

1877

1 THE WITNESS: I was just going to say the city had to  
2 issue the notice under the order of the MDEQ.

3 MR. CHRISTIAN: Thank you for clarifying that.

4 BY MR. CHRISTIAN:

5 Q. And just for clarity, TTHM stands for total  
6 trihalomethane; is that correct?

7 A. Yes.

8 Q. You read the alerts and orders that went out, correct?

9 A. Yes.

10 Q. And they had it spelled out total trihalomethane; is that  
11 correct?

12 A. Yes.

13 Q. And if we're going too much further, and I think you may  
14 have testified about this. The fact that a water system has  
15 TTHM is not an indication of whether or not it has lead; is  
16 that correct?

17 MR. STERN: Objection. Foundation.

18 THE COURT: Overruled. He either knows or doesn't  
19 know.

20 THE WITNESS: I'm not aware of a connection between  
21 those two things.

22 BY MR. CHRISTIAN:

23 Q. And, in fact, in the notice that went out from the city,  
24 do you recall about TTHMs was the word "lead" mentioned?

25 A. We could look at that -- not that I recall. There's a lot

1 of fine print in those notices. And there's a lot of standard  
2 language, I understand, from the Safe Drinking Water Act. But  
3 I don't recall that lead was there.

4 Q. So in October of 2014 -- and we talked about it a few  
5 times -- you learn about the City of Flint being out of  
6 compliance with the Safe Drinking Water Act with respect to  
7 TTHMs; is that correct?

8 A. I understood that after some lab results were certified,  
9 the city would go out of compliance with the TTHM contaminant  
10 level in the Safe Drinking Water Act.

11 Q. And you first learned about that fact or that there was a  
12 potential TTHM problem from the MDEQ; is that correct?

13 A. Yes.

14 Q. You didn't hear -- this is in October of 2014.

15 It was months after Mr. Earley's order that you have  
16 day-to-day operations or responsibilities with respect to the  
17 Department of Public Works; is that correct?

18 A. Yes.

19 Q. And you were having weekly meetings with Mr. Croft?

20 A. Yes.

21 Q. Mr. Croft did not tell you about the TTHM problem; is that  
22 correct?

23 A. He did not.

24 Q. Not before the MDEQ at least?

25 A. Right. He was there in that meeting. That was a group



1 meeting that I was a part of along with Mr. Croft, the  
2 emergency manager, personnel from Michigan Department of  
3 Environmental Quality. That's where I learned about it.

4 Q. So -- and at that meeting -- and it may seem repetitive --  
5 VNA was not at that meeting, correct?

6 A. Correct.

7 Q. And that time, October -- how many months is that, about  
8 four months before VNA signed its contract on February 10?

9 A. Yes. It might have been the end -- it might have been  
10 more the middle or the end of the month, yeah. I mean, three,  
11 three and a half, four months.

12 Q. So by November of 2014, as you've testified to, LAN had  
13 put together at the city's request a document analyzing the  
14 TTHM issue; is that correct?

15 A. Yes. That was the draft evaluation report I believe is  
16 how it was labeled.

17 Q. So let's just turn to Tab 8, which is Plaintiffs'  
18 Exhibit 2012.

19 Does that look familiar to you?

20 A. Yes.

21 Q. And is that the LAN document that we just spoke of?

22 A. Yes. Although, I believe the earlier one was titled  
23 "Draft." I think this one maybe was just a bit updated from  
24 that, but it's from right about that same time. It says  
25 November 2014.

March 30, 2022

1880

1 Q. And did there come a time when Flint received an official  
2 letter from the MDEQ that it was in violation of TTHM limits?

3 A. Yes.

4 Q. Let's turn to Tab 9, please.

5 You'll see what has been premarked for identification  
6 as VNA trial Exhibit 1906.

7 You've seen this before; is that correct?

8 A. Yes.

9 Q. And this is the official MDEQ TTHM violation notice; is  
10 that right?

11 A. Yes.

12 MR. CHRISTIAN: Your Honor, we move to admit VNA  
13 Exhibit 1906 into evidence.

14 MR. STERN: No objection.

15 MR. ERICKSON: No objection.

16 THE COURT: Okay. It's received.

17 (VNA Exhibit No. 1906 Admitted Into Evidence.)

18 BY MR. CHRISTIAN:

19 Q. Would you please turn to the last page of this document?

20 A. The important information about your drinking water?

21 Q. Yes.

22 A. I see.

23 Q. On this page, this is a sample form that is used to notify  
24 the public of a TTHM violation; is that correct?

25 MR. STERN: Objection. Foundation.

March 30, 2022

1881

1 THE COURT: Well, if you know.

2 Do you know this sample forms?

3 THE WITNESS: I don't know. I mean, it looks like  
4 one to me, but I don't think I would maybe know the  
5 difference.

6 BY MR. CHRISTIAN:

7 Q. So let's take a look at the bottom. There's a line above  
8 certification.

9 Do you see that?

10 A. Yes. And I see. Maybe this is what's attached actually  
11 to the MDEQ. So maybe the MDEQ is providing this to the city  
12 as part of this notice, yep.

13 Q. Okay. So let's look to the middle of the page where  
14 there's italic text. It says in quotes -- or it says, "People  
15 who drink water containing trihalomethanes in excess of the MCL  
16 over many years may experience problems with their liver,  
17 kidneys, and central nervous system, and may have an increased  
18 risk of getting cancer."

19 Did I read that correctly?

20 A. Yes.

21 MR. CHRISTIAN: So we're going to put the December  
22 16, 2014, TTHM violation notice on our timeline.

23 BY MR. CHRISTIAN:

24 Q. Now, you testified about the potential problems associated  
25 with TTHMs, and if I recall correctly -- and you correct me if

1 I'm wrong -- you thought they were potential serious problems  
2 of health effects that could come from TTHMs, correct?

3 A. Yes. I took this -- I took very, very seriously.

4 Q. And despite that, the City of Flint did not reconnect to  
5 DWSD water; is that correct? At the time.

6 A. It didn't. It was -- I took this very seriously. And I  
7 also was trying to follow what I understood the guidance and  
8 the science to be.

9 So I noticed in the second bullet -- you had me read  
10 the first bullet or you read it.

11 The second bullet says, "You do not need to boil your  
12 water or take other corrective actions. If a situation arises  
13 where the water is no longer safe to drink, you will be  
14 notified within 24 hours."

15 So it was a case where there was a very high level of  
16 concern. The guidance was also that residents could, you  
17 know, safely continue to use the water unless there was  
18 another notification. That's what I did in my household.  
19 That's how I understood it.

20 Q. So we just heard a bit of information about what happened  
21 in 2014 from the time of the switch in April through the end of  
22 the year. Just want to recap a couple of things.

23 The complaints started almost immediately after the  
24 switch; is that correct?

25 A. Yes.

1 Q. And the nature of the complaints smell, taste?

2 A. Yes.

3 Q. Odor?

4 A. Yes.

5 Q. And those complaints persisted through the rest of your  
6 time as mayor; is that correct?

7 A. Yes. Until that very -- that very end. I mean, that  
8 very, very end --

9 Q. Very, very end.

10 A. -- with the switch back to Detroit.

11 Q. And did they stop immediately after the switch back to  
12 Detroit?

13 A. No. I don't -- well, I don't remember getting complaints  
14 in just those last couple of weeks that I was in office along  
15 those lines.

16 Q. And you had an August boil advisory?

17 A. Yes.

18 Q. And a September boil advisory?

19 A. Yes.

20 Q. And then there was a TTHM violation notice?

21 A. Correct.

22 Q. And at the end -- by the end of 2014, still no switch back  
23 to DWSD?

24 A. That's correct.

25 Q. And VNA had no role in any of this, correct?

March 30, 2022

1884

1 A. Correct. Not at all in 2014.

2 Q. So I'd like to direct your attention to another topic now.  
3 Yesterday, I believe it was you -- or earlier, you testified  
4 about General Motors and its use of the water from the Flint  
5 River.

6 First of all --

7 A. Yes.

8 Q. -- at the time when you were mayor of Flint in 2014, how  
9 many factories did GM have in Flint?

10 A. Four or five.

11 Q. So four or five?

12 A. Yes.

13 Q. I'm going to show you a document that's been marked as VNA  
14 Exhibit 5454I. It's Tab 10.

15 A. Okay.

16 Q. So this is an email dated October 13 of 2014, correct?

17 A. Yes.

18 Q. And you're a recipient of this email?

19 A. Yes. I'm CC'd.

20 Q. So you're copied on it?

21 A. Yes.

22 MR. CHRISTIAN: Your Honor, we move to admit VNA  
23 Exhibit 5454I into evidence.

24 MR. STERN: No objection.

25 MR. ERICKSON: No objection.

1 THE COURT: Okay. It's received.

2 (VNA Exhibit No. 5454I Admitted Into Evidence.)

3 BY MR. CHRISTIAN:

4 Q. And if we look at the other recipients of this email,  
5 would you just please tell the jury who they were, their names,  
6 rather?

7 THE COURT: There are several emails on here.

8 Which one are you talking about?

9 BY MR. CHRISTIAN:

10 Q. Okay. So let's start -- let's just start -- I believe,  
11 let's start at the earliest email, which would be at the middle  
12 of the page roughly. Slightly above?

13 MR. STERN: Your Honor, I think the earliest email is  
14 actually at the bottom of page 1. It starts with the words  
15 "Pete" and then goes into page 2.

16 MR. CHRISTIAN: Thank you, Mr. Stern.

17 THE COURT: Yeah. That's what I show.

18 BY MR. CHRISTIAN:

19 Q. So at the furthest -- at the lowest to-line on this page,  
20 would you please list the recipients?

21 A. So we have on the screen you have up there, the Liz Murphy  
22 or -- she wasn't CC'd. Elizabeth or Liz Murphy, assistant to  
23 the emergency manager. And then above that name, Howard Croft,  
24 public works director.

25 I was looking at the screen. Is that where you were

1 asking me about?

2 Q. Just -- we're just trying to figure out who received this  
3 -- who was in this email thread.

4 A. Right. So I mentioned Elizabeth Murphy. I believe every  
5 other name on here is up at the very top of page 1.

6 Q. Okay. So this included Emergency Manager Earley?

7 A. Yes. It was -- at the top, this is the item sent from Tom  
8 Wickham, who's Flint manufacturing communications, so in Flint.  
9 And he's sending this email to Darnell Earley and Elizabeth or  
10 Liz Murphy.

11 And then we have a group of people CC'd. Howard  
12 Croft, public works; Pete Bade, city attorney; myself; Jason  
13 Lorenz, public information officer; Gerald Ambrose as finance  
14 director. Daugherty Johnson utilities administrator. Anthony  
15 chub was, I believe, a deputy city attorney at that time.

16 Q. So let's look at the bottom of the screen. There's a  
17 paragraph that says, "The City of Flint has honored" -- begins  
18 with, "The City of Flint has honored."

19 A. Yes.

20 Q. Would you please read that for the jury?

21 A. Yes.

22 This is from Elizabeth Murphy. "I changed a couple  
23 of phrases. The City of Flint has honored a request by General  
24 Motors in allowing them to divert a portion of their water  
25 supply needs to a different supplier for internal processing



1 purposes.

2 "GM is the only company which has made a request to  
3 temporarily use a different water source. General Motors  
4 spokesperson Tom Wickham can be reached" -- do you want me to  
5 read his number into the record?

6 Q. Thank you for asking. No, thank you.

7 A. That's good enough?

8 Q. That's fine. Thank you, so much.

9 And this language you just read, from looking at the  
10 email, what was the purpose of that language?

11 A. This was -- so Tom Wickham was communications for the  
12 Flint manufacturing complex. Three manufacturing complexes on  
13 the city's southwest side. It was an engine company. They do  
14 engines -- I really should know. Engines, truck assembly. And  
15 there's one other.

16 So Tom worked on those three facilities called Flint  
17 manufacturing -- the Flint manufacturing complex. And this  
18 looks like an email chain that were working on a pretrial  
19 release.

20 So I think that's why Liz is saying, you know, "I  
21 changed a couple of phrases." Looks like -- there must have  
22 been some language that was shared, either in this email chain  
23 or in a separate chain about preparing a press release.

24 Q. And in this language, the first line we see allowing them  
25 to divert a portion of their water supply.

March 30, 2022

1888

1                   So is it your recollection that GM diverted all of  
2                   their water supply away from the Flint River or only some of  
3                   it?

4           A.    It's my recollection that it was one plant in the Flint  
5                   manufacturing complex that disconnected from what had been its  
6                   water supply, which was the City of Flint maintained portion.  
7                   And it connected to a nearby pipe from the Genesee County Drain  
8                   Commissioner's purview.

9                   And that water continued to be from DWSD.

10          Q.    So to be clear, only one out of four or five plants  
11               switched to --

12          A.    That's my recollection.   The other facility is on a  
13               different side of town over by the current Kettering  
14               University.   The tool and die plant.   And I believe it was the  
15               engine plant that had this issue.

16          Q.    Okay.   So a couple of days later on October of --  
17               October 16 of 2014, the City of Flint put out a press release  
18               about this.

19                   Do you recall?

20          A.    That sounds right.

21          Q.    Okay.   So let's take a look at Tab 11, which is VNA  
22               Exhibit 5454J.

23                   Do you recognize this?

24          A.    Yes.   Yes, I do.

25          Q.    And did you see this at the time?

March 30, 2022

1889

1 A. Yes.

2 MR. CHRISTIAN: Your Honor, we move to admit VNA  
3 Exhibit 5454J into evidence.

4 MR. STERN: No objection.

5 MR. ERICKSON: No objection.

6 THE COURT: Okay. It's received.

7 (VNA Exhibit No. 5454J Admitted Into Evidence.)

8 BY MR. CHRISTIAN:

9 Q. So would you please look at the first paragraph of this  
10 press release.

11 A. Yes.

12 Q. And it describes an agreement with General Motors to allow  
13 the company to temporarily use Flint township water for a water  
14 source for manufacturing needs.

15 Was there some sort of a process where an agreement  
16 was reached?

17 A. Yes. I think over a couple week period.

18 Q. And then let's look at the next paragraph.

19 And were you a part of those negotiations,  
20 Mr. Walling?

21 A. No, not the negotiations. But I was, as you saw in that  
22 last email, I was looped in on what the -- on the developments  
23 were. And then when the public communication was being  
24 prepared.

25 I continued to have a lot of those external

1 connections, and people would contact me. So it was easier if  
2 I knew in advance.

3 But you do see this -- you look at different  
4 letterhead throughout this time. This letterhead was selected  
5 to be City of Flint Office of Emergency Manager. So this was a  
6 statement from Mr. Earley. I was aware of it.

7 Q. And so if we look at the paragraph that is now  
8 highlighted, the next paragraph from what you just read, would  
9 you please just read that for the record?

10 A. Yes.

11 "The City of Flint uses chloride as an important  
12 component in making water safe for drinking. But that can  
13 cause problems for GM's machining work. The agreement comes  
14 after GM raised concerns about chloride levels in Flint's  
15 treated water."

16 Q. Now, what, if any, knowledge do you have about what  
17 machining work is?

18 A. Well, I think they're just meaning that that's a place  
19 where they're actually producing parts. So we're most famous  
20 for that big Flint truck assembly plant. The engine plant is  
21 actually doing, I believe, some part machining of those parts.

22 So it's trying to, I think, be specific about GM does  
23 lots of things in this community. This is about what's  
24 happening with the machining work in one plant.

25 Q. So just going to the next paragraph.

March 30, 2022

1891

1                   And let me ask you, did you -- what, if any, role did  
2     you have in terms of editing the language in this press  
3     release?

4     A.   I don't remember. I don't recall that I had any edits or  
5     revisions to this. Again, I was in the loop. But it reflects  
6     what I understood was the issue from General Motors. I had  
7     worked with Tom Wickham in other capacities over the years. I  
8     believe I was in maybe one meeting where it was discussed.

9                   So this was Mr. Earley's statement. But from what I  
10    knew, this was what the city understood.

11   Q.   So just -- if you read the first sentence of this  
12    paragraph?

13   A.   "This temporary switch is needed to allow GM to use water  
14    that does not have the same level of treatment provided for  
15    high quality drinking water."

16                  MR. CHRISTIAN: So, Your Honor, we're getting ready  
17    to switch sections. So I don't know if this is a point in  
18    which you're --

19                  THE COURT: This looks like a good time to take a  
20    break. So -- or to end for the day. Sorry. I didn't mean to  
21    startle the jury.

22                  So we will conclude for the day. We'll be back at it  
23    at 9:00 A.M. in the morning.

24                  And so you'll be returning, Mr. Walling. And we will  
25    take it from there.

March 30, 2022

1892

1 Please rise for the jury. And you remember  
2 everything I've told you every other day.

3 (Jury Out)

4 THE COURT: You can step down, Mr. Earley or  
5 Mr. Walling. There's two L's in there.

6 Then what I'd like to do is have a sidebar conference  
7 -- please be seated. Conference. Well, we can start --

8 MR. STERN: I just want to -- if I could just let  
9 Mr. Walling know that it's been the Court's practice we do not  
10 have Court on Fridays.

11 THE WITNESS: No?

12 MR. STERN: So to the extent he wants to punch me.

13 THE COURT: We have other work to do on Friday to try  
14 to catch up around here, and I'm sure everyone else, too. So  
15 we won't be in session on Friday.

16 I don't know how much longer.

17 Mr. Christian, do you think you have a lot more to  
18 go?

19 MR. CHRISTIAN: Oh, yes. There's quite a bit more,  
20 Your Honor.

21 THE COURT: And then, Mr. Erickson, will you have a  
22 lot of material?

23 MR. ERICKSON: Your Honor, it's hard to say. I'm  
24 going to be reevaluating this evening.

25 THE COURT: Okay. So it would be my guess it would

March 30, 2022

1893

1 be possible you would be here all day tomorrow and potentially  
2 a little bit on Monday.

3 THE WITNESS: Next week Monday through Thursday,  
4 right?

5 THE COURT: Yeah. Okay. Thank you for your  
6 patience.

7 MR. MAIMON: On that note, Your Honor.

8 THE COURT: Yes.

9 MR. MAIMON: And, obviously, we're not looking to  
10 interrupt or interfere with counsel's examination. We had  
11 Aundrea Teed's mother scheduled for tomorrow. If we're not  
12 going to get to her, I'm going to call her and tell her, "You  
13 know, don't bother coming down."

14 What's that?

15 MS. BUSH: Oh, I got it. Aundrea. April.

16 MR. MAIMON: Yes. Apricot.

17 MR. STERN: Aundrea Teed's one of our plaintiffs.

18 THE COURT: I can't imagine that if we have  
19 Mr. Walling back tomorrow that we'll get to your next witness.

20 MR. MAIMON: And that's fair enough. Because, you  
21 know, obviously we want to keep things going. If all of a  
22 sudden we're done at 11:00, and I don't -- it doesn't seem so.  
23 But that's up to the defendants. I don't want to be caught  
24 short. That's all.

25 THE COURT: What do you think, Mr. Christian?

1 MR. CHRISTIAN: If I were telling him based on what  
2 we have left, I would advise him not to call that witness  
3 tomorrow.

4 THE COURT: Okay. All right. Well, that's  
5 definitive.

6 MR. MAIMON: I appreciate it. Thank you.

7 THE COURT: Good. Okay. I wanted -- I just wanted  
8 to draw one thing to your attention that I'm curious about. I  
9 saw a copy of a Tweet from Veolia Flint facts indicating that  
10 one of the witnesses in our case is hiding behind lies and  
11 hiding behind silence.

12 And I'm not sure if there's a problem. I mean,  
13 that's a Tweet -- I don't know. Is that a Veolia North  
14 America official statement regarding the trial?

15 Are they tweeting the trial? Or what do you know,  
16 Mr. Christian?

17 MR. CHRISTIAN: I'm not aware of that statement, Your  
18 Honor.

19 THE COURT: Mr. Stein, are you aware? I can give you  
20 the exhibit. It's the last page of Governor Snyder's request  
21 for interlocutory appeal.

22 MR. STEIN: I saw it attached to Governor Snyder's  
23 papers.

24 THE COURT: Yeah.

25 MR. STEIN: I hadn't seen it before that.



1           THE COURT: See, model rule of professional conduct  
2     3.6A provides that a lawyer who is participating or has  
3     participated in the investigation of litigation -- or  
4     litigation of a matter shall not make an extra judicial  
5     statement that the lawyer knows or reasonably should know will  
6     be disseminated.

7           And I'm not suggesting that any of you made this  
8     statement. It's -- or that, you know, I don't know who made  
9     it. But -- and the comment to the rule suggests that that  
10    applies to making a statement about a witness's identity of a  
11    witness or expected testimony of a party or a witness.

12           And this is an expected witness.

13           So I just wanted to know whether counsel was involved  
14    in this.

15           MR. STEIN: I saw it in Governor Snyder's papers for  
16    the first time. And I don't know of any --

17           THE COURT: My experience thus far in our case is  
18    there are many more lawyers than are in court. There are  
19    layers and layers of lawyers, and I think we've got at least  
20    two law firms involved for Veolia.

21           It does seem -- I would like to just know that other  
22    lawyers on your team are not tweeting about a witness, the  
23    identity of witnesses, expected testimony and so on.

24           MR. STEIN: We'll look into it and get back to the  
25    Court.

1 THE COURT: Okay. And then we can sort of sort it  
2 out if that's appropriate.

3 I'm interested in anything on the schedule for April  
4 that you all have agreed that you need a day off, or are we --

5 MR. MAIMON: So I don't think we've -- Mr. Campbell  
6 approached me during the break and asked me what exactly was  
7 it that we were referring to.

8 And I just told him that for me personally the 18th  
9 of April and the 21st of April, more the 21st than the 18th,  
10 but both are somewhat problematic for me. It's the Passover  
11 holiday around then. And just traveling back and forth would  
12 be problematic.

13 THE COURT: Yeah.

14 MR. MAIMON: Again, I don't know that a decision has  
15 to be made right now, Your Honor. If, for instance -- and I  
16 told Mr. Campbell and I was meaning to speak with Mr. Mason  
17 after we concluded court today.

18 If one of those days happens to be a day when we're  
19 going to be showing video and there's no other problem, I  
20 don't -- I wouldn't want to get in the way of that. I would  
21 like to be here when we have live witnesses.

22 THE COURT: Okay.

23 MR. MAIMON: Especially if they're witnesses that I'm  
24 going to be putting on.

25 THE COURT: Okay. Well, I'll let you talk a little

March 30, 2022

1897

1 bit more about it --

2 MR. MAIMON: Thank you.

3 THE COURT: -- and then I will take a look, too.

4 And then the last thing for today is the --

5 Mr. Maimon, are plaintiffs making -- what would be helpful to  
6 me in deciding this issue is if there's a motion before the  
7 Court for the live video feed testimony for your witness,  
8 Mr. Del Toral?

9 MR. MAIMON: Yes. We'll prepare that and submit  
10 that.

11 THE COURT: You can make it orally. I don't need  
12 it --

13 MR. MAIMON: Okay.

14 THE COURT: I understand.

15 MR. MAIMON: So then if I may, Your Honor?

16 THE COURT: Yes.

17 MR. MAIMON: Plaintiffs hereby move pursuant to Rule  
18 43 of the Federal Rules of Civil Procedure for asking the  
19 Court to exercise its discretion to allow Mr. Miguel Del Toral  
20 to appear as a witness by videoconferencing, whether it's Zoom  
21 or any other mechanism that facilitates that and allows it in  
22 the most effective way.

23 As indicated yesterday, Mr. Del Toral has personal  
24 concerns with regard to the COVID-19 pandemic.

25 THE COURT: And I don't want argument on the motion

March 30, 2022

1898

1 right now. I've gotten sort of quasi-briefing in a sense.  
2 I've gotten Mr. Kent's article. I heard some argument  
3 yesterday from Mr. Campbell and others.

4 MR. MAIMON: So that's our motion, Your Honor, to  
5 allow us for the reasons stated yesterday and those under the  
6 case law to allow us to do that.

7 MR. CAMPBELL: Your Honor, just to be clear, if you  
8 don't mind.

9 THE COURT: No, I don't mind.

10 MR. CAMPBELL: My statement was as to my experience  
11 doing this in courtrooms, and it was problematic. And that  
12 was not yesterday. It wasn't this year. It wasn't in the era  
13 of Zoom. So my concern is that if this happens, we need to  
14 make sure that it works.

15 THE COURT: Well, this is what I want to do, which is  
16 that I want to -- you sent me three cases. There were cases  
17 referenced in Mr. Kent's article. I want to take a chance to  
18 review those further.

19 But one thing that struck me, which is why I wanted  
20 to do this at sidebar, and I just want to confirm with Bill  
21 that it's not being recorded or broadcast.

22 I recall early on, prior to, I think, the motions for  
23 summary judgment, that Mr. Del Toral's deposition was -- had  
24 some portions redacted related to a health concern.

25 MR. MAIMON: So I don't think that it actually ended

March 30, 2022

1899

1 up being redacted. I know that there was a concern because  
2 another EPA official in a deposition that preceded his had  
3 disclosed that he had some medical condition and disclosed  
4 what it was.

5 But at the deposition itself, I think that when that  
6 issue was raised with Mr. Del Toral, his words were, "I'm an  
7 open book, and I have nothing to hide."

8 THE COURT: Okay.

9 MR. MAIMON: Not that we think that any of that is  
10 relevant. But I don't think --

11 THE COURT: Well, here's the relevance to me.  
12 What was the medical condition?

13 MR. MAIMON: So he -- I believe, he suffered from a  
14 bipolar disorder and took a leave of absence sometime in July  
15 of 2015, July and August of 2015.

16 MR. CHRISTIAN: Your Honor, similar, I think it's  
17 schizophrenia.

18 THE COURT: I think it is, too. I recall reading  
19 that it was schizophrenia. And yesterday, it just so happened  
20 that National Public Radio did a story on four or five studies  
21 that have revealed that after age, schizophrenia is the  
22 highest risk factor for death from COVID.

23 The study came out of Israel, South Africa, Korea,  
24 England, and the United -- it was something like that. I can  
25 send it all to you.

March 30, 2022

1900

1           And that -- I listened with special interest, because  
2           I recalled that that's what Mr. Del Toral testified to having  
3           a diagnosis for.

4           But in light of that, that seems like a medical  
5           condition.

6           So -- but do I understand you correctly that it's  
7           COVID is the reason he doesn't want to travel, his concern?

8           MR. MAIMON: That's exactly right. We've discussed  
9           alternative ways of travel, and he just won't travel here.

10          THE COURT: Yeah. Okay. All right.

11          I think, Mr. Kent, did you have something or  
12          Mr. Mason?

13          MR. MASON: Your Honor, depending on where you come  
14          out, we believe that there are -- and the advisory committee  
15          has given some guidance with respect to the interpretation of  
16          this.

17          But not to argue the motion, I would just say if you  
18          do decide to go forward with this, I would respectfully  
19          request the opportunity to appear in person with him to take  
20          the examination in person.

21          I think that we are getting so far afield of the  
22          ability to confront witnesses live in courtrooms that we  
23          cannot set a precedent of having to do it Zoom. The jurors  
24          have to be here in person. Are we going to allow them to Zoom  
25          in, in the future, too? So --

March 30, 2022

1901

1 THE COURT: Well, no. Mr. Mason, no, we're not going  
2 to allow the jurors to Zoom in. That's why we're doing it  
3 here with a COVID protocol in place as an order of the court.

4 And if I understand, COVID-19, it's a virus that is  
5 transmitted through respiratory droplets or whatever. And if  
6 Mr. Del Toral doesn't want to drive here from Virginia --

7 MR. STERN: Chicago.

8 MR. MAIMON: Chicago.

9 THE COURT: -- Chicago go to be in person with us, I  
10 cannot -- I cannot imagine that he wants to be in a room,  
11 small room with you or a large room.

12 MR. MASON: Well, then I think we should be able to  
13 voir dire him over Zoom to find out whether he is out and  
14 about, where he lives. We're taking this presumption that he  
15 lives in a bubble because of his concerns.

16 But if, in fact, he does get out on a regular basis  
17 and is around people and goes to restaurants and things like  
18 that, I think that's valuable information for Your Honor to be  
19 able to decide this issue of whether it is indeed  
20 extraordinary circumstances.

21 If his schizophrenia and fear of COVID is such that  
22 he essentially does not ever get around people, that's  
23 certainly relevant. But if he is not, then at a minimum, you  
24 know, I'm fully vaccinated. We'll wear a mask. We'll social  
25 distance.

1 But at a minimum, I think that's relevant information  
2 for Your Honor to consider.

3 THE COURT: Well, and also if there's further  
4 argument you want to make at this point, what I anticipate  
5 doing is issuing a very short written opinion on the subject.  
6 So if there is more argument that is to be had, feel free to  
7 make it.

8 But what I would do in the event I grant the motion,  
9 we would set up a time to test the technology and to make sure  
10 that we can hear him. He can hear us. He can see you. And  
11 that the exhibit can be easily -- Mr. Campbell, I think or  
12 maybe you did, brought up the issue of you don't want to send  
13 your exhibits ahead of time to the witness?

14 MR. MASON: Yeah.

15 THE COURT: That's a fair -- a fair concern. So I  
16 want to make sure that he can see exhibits that are put in  
17 front of him if they're put on either the screen or an ELMO,  
18 whatever you prefer.

19 MR. MAIMON: I've had some experience with this, Your  
20 Honor. And while counsel -- all counsel should be free to do  
21 what they wish.

22 In other cases where we've taken testimony by Zoom,  
23 we can reach -- I've reached agreements with opposing counsel  
24 that people can send a binder to be sealed and not opened up  
25 until the examination starts. And this way --



1           THE COURT: But like Mr. Stern had an exhibit that he  
2 found last night that he thought, "Hey, I'm going to use this.  
3 It wasn't in the binder."

4           So we just have to make sure that that can work. I  
5 don't want to limit anyone in here --

6           MR. MAIMON: I wouldn't suggest that it's any  
7 limitation.

8           But to the extent that we think that it could  
9 facilitate and make it easier, those type of safeguards or  
10 precautions or ideas can help facilitate the process along so  
11 that the one document here, one document there can be shown to  
12 the witness and dealt with easier than if we have the binders  
13 full.

14           But that's just what I've done in other cases during  
15 the COVID pandemic.

16           THE COURT: And there was a list in the Whitt case  
17 from the Eastern District of Tennessee of safeguards that that  
18 court ordered, which was that, "The plaintiffs ensured that  
19 the witness can be heard and understood by the jury and the  
20 parties.

21           "That the witness testifies alone in a closed room,  
22 free of any outside influence."

23           The same conditions that we would have in court.

24           And that, "Defendant be allowed a sufficient  
25 opportunity to cross-examine the witness and that the

1 transmission of the video conference be instantaneous."

2 So I would set aside time next week after the jury  
3 leaves to try this out, so we'd have to make sure  
4 Mr. Del Toral is available.

5 I don't -- I want to finish reading what you've  
6 submitted, do a little bit of my own research, and then make a  
7 decision.

8 MR. MASON: And then I'd just request that the Court  
9 consider -- I know you haven't ruled yet. But if the Court is  
10 going to test this out, that I be given the opportunity to  
11 voir dire the witness on the question of how significant this  
12 exposure is so the Court can make the determination at that  
13 time. Even if you're making a judgment subject to that, I'd  
14 like to be able to make a record.

15 Because I do think as technology evolves, I would  
16 like to make a record on this if I could --

17 THE COURT: Okay.

18 MR. MASON: -- with respect to asking the witness  
19 about this.

20 THE COURT: Let me just ask Mr. Maimon or Mr. Stern,  
21 you've represented that he doesn't want to travel, that you've  
22 explored options.

23 Do you know the answers to --

24 MR. STERN: I know for certain that he is scared to  
25 travel. I've heard that he has rarely, if ever, left his

March 30, 2022

1905

1 home. And he is concerned -- he hasn't talked to me about his  
2 mental condition other than during the deposition.

3 But I have not asked him, "Is the reason you're  
4 scared because of how it would affect your schizophrenia?" I  
5 just don't feel like that's appropriate.

6 He represented to me he wants to be here, but he's  
7 scared to travel. If someone doubts the veracity of the  
8 representation I'm making, I have no problem if he asks  
9 Mr. Del Toral himself. Because that's what he's told me, and  
10 I'm certain that's what he'll tell them.

11 THE COURT: That's a good idea. Okay. So I'll get  
12 busy finalizing a decision on this. And if the decision is  
13 that he can testify remotely, then we'll set a time for 20  
14 minutes or so after the jury leaves next week.

15 MR. MAIMON: Thank you, Your Honor.

16 THE COURT: Anything else? Okay. Good. Take care.

17 (Proceedings Concluded)

18 - - -

19  
20 CERTIFICATE OF OFFICIAL COURT REPORTER

21 I, Jeseca C. Eddington, Federal Official Court  
22 Reporter, do hereby certify the foregoing 171 pages are a true  
23 and correct transcript of the above entitled proceedings.

24 /s/ JESECA C. EDDINGTON  
25 Jeseca C. Eddington, RDR, RMR, CRR, FCRR

03/30/2022  
Date